

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.12.2018

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THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2718 of 2006

and

M.P.No.1 of 2006

National Insurance Co., Ltd.,  
Villupuram.

... Appellant/4<sup>th</sup> Respondent

Vs.

1.Ramachandran  
2.Rani  
3.Gopi  
4.Minor Jeeva  
5.Minor Ganesa Murthy  
(Minors 4 & 5 rep.by their father and  
next friend Ramachandran)

6.G.R.Surana & Sons  
16, Trust Square Street,  
Ramalingapuram, Chennai - 12.

7.The New India Assurance Co., Ltd.,  
Fort Station Road, Trichy -2.

8.Senthilkumar

9.N.Devadoss ... Respondents/Petitioners 1 to 5 & Respondents

(Respondents 6, 8 & 9 remained exparte in the lower Court  
and hence notice dispensed with for them)

Civil Miscellaneous Appeal filed under Section 173 of Motor  
Vehicle Act, 1988 against the judgement and decree made in  
MACTOP No.420 of 2003 on the file of the Motor Accidents Claims  
tribunal (Principal District Judge) Villupuram, dated 30.11.2005.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : No appearance for R1 to R5  
Mr.D.Bhaskaran for R7

Respondents 6, 8 & 9 remained exparte  
before the lower Court

## J U D G M E N T

This Civil Miscellaneous Appeal is filed against the judgement and decree made in M.A.C.T.O.P.No.420 of 2003, on the file of the Motor Accidents Claims tribunal (Principal District Judge) Villupuram, dated 30.11.2005.

2. The respondents 1 to 5/ claimants, the legal heirs of the deceased Elavarasan, filed a claim petition in M.A.C.T.O.P.No.420 of 2003, before the Principal District Judge, Villupuram, under Section 166(1) of Motor Vehicles Act, seeking compensation of Rs.7 lakhs for the death of said Elavarasan in a road accident, which took place on 23.2.2003.

3.The brief case of the respondents 1 to 5 is as follows :

On 23.02.2003, the deceased Elavarasan was driving a TATA SUMO Car bearing Registration No.TN-32-B-1896, belonging to the 8<sup>th</sup> respondent and insured with the National Insurance Company Limited, Villupuram/the appellant herein, from Sathankulam to Tirukoilur. At about 2.00 a.m., when the Car was nearing a rice mill at Edamalaipatti Village, a speeding lorry bearing Registration No.TCY-2934, belonging to the 6<sup>th</sup> respondent, insured with the New India Assurance Company Limited, Trichy / the 7<sup>th</sup> respondent herein, hit the Car, as a result of which, the deceased Elavarasan died on the spot. According to the respondents 1 to 5, the accident had occurred due to the rash and negligent driving of the driver of the lorry and hence, the respondents 6 and 7, who are owner and the insurer of the said lorry respectively, are jointly and severally liable to pay compensation to them. It is also stated by the respondents 1 to 5 that they have impleaded the owner of the car and its insurer out of abundant caution.

4. After analysing the entire evidence on record, the tribunal held that both the drivers of the Car and the Lorry were equally responsible for the accident and hence, the Appellant and the seventh respondent herein, who are the insurers of the aforesaid vehicles, were directed to pay a compensation of Rs.3,14,400/-, along with interest at the rate of 7.5% per annum to the respondents 1 to 5. Aggrieved against the said judgment and decree, the appellant has filed the present appeal.

5. Mr.M.Krishnamoorthy, learned counsel appearing for the appellant/ National Insurance Company Limited, Villupuram, would contend that when the F.I.R and the final report were filed against the driver of the Lorry, the tribunal erroneously fixed the negligence on the part of the drivers of the Lorry and the Car, in the ratio of 50 : 50 and directed the appellant to

pay their share of 50% of the award amount. Thus, the learned counsel sought to modify the liability fixed equally on the appellant along with the 7<sup>th</sup> respondent.

6. Per contra, the learned counsel appearing for the 7<sup>th</sup> respondent/ New India Assurance Company Limited, Trichy, insurer of the Lorry would contend that since the accident took place on the middle of the road and P.W.1, the eye witness to the occurrence, has also deposed that there was a head on collision between the Lorry and the Car and fixing the negligence in the ratio 50 : 50 by the tribunal is based on the facts and therefore need not be disturbed.

7. The learned counsel appearing for the respondents 1 to 5 would contend that as per the evidence available on record, the driver of the lorry alone was responsible for the accident and therefore, the entire compensation should be paid by the respondents 6 and 7, who are the owner and insurer of the lorry.

8. The tribunal fixed the negligence on the part of drivers of both the Lorry and the Car, based on a copy of rough sketch (Ex.B2) as well as the evidence of P.W.1, who also travelled in the TATA SUMO Car, driven by his brother i.e., deceased Elavarasan. P.W.1 has categorically deposed in his evidence that a speeding lorry bearing Registration No.TCY-2934, hit their Car, though his brother attempted to park his car on the left side of the road, on seeing the speeding lorry coming on the opposite direction. No where his evidence he has stated that the accident took place on the middle of the road.

9. That apart, Ex.B2 rough sketch would show that the driver of the Lorry was responsible for the accidents as the Car is found on the extreme left hand side of the road. Moreover, the contents of Ex.B2 have not been disputed by the owner of the lorry or its insurer. It is also to be noted that the final report was filed only against the driver of the lorry. Therefore, this Court is of the view that the tribunal was wrong in fixing the negligence on the part of both the drivers of Lorry and Car in the ratio 50 : 50. In the facts and circumstances, the owner of the lorry and its insurer namely the respondents 6 and 7 alone are jointly and severally liable to pay compensation to the respondents 1 to 5. Accordingly, the findings rendered by the tribunal is modified to that effect.

10. In view of the aforesaid discussions, the owner of the Lorry and its insurer - New India Assurance Company Limited, Trichy i.e., the respondents 6 and 7 are jointly and severally liable to pay the entire compensation to the respondents 1 to 5. Accordingly, they are directed to deposit the award amount of Rs.3,14,400/- together with interest at the rate of 7.5% per

annum within a period of four weeks from the date of receipt of a copy of this order, less the amount already deposited by them. On such deposit, being made the respondents 1 to 5 / claimants are entitled to withdraw their respective shares as apportioned by the tribunal.

11. In the result the appeal is allowed. The appellant is permitted to withdraw the compensation amount already deposited by them. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims tribunal  
(Principal District Judge)  
Villupuram.

2. The Section Officer,  
V.R. Section,  
High Court, Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.85370

+1cc to Mr.D.Bhaskaran, Advocate SR.No.85277

+1cc to Mr.S.Srinath, Advocate SR.No.85195

C.M.A.No.2718 of 2006  
and  
M.P.No.1 of 2006

SR(CO)  
GMY(13/03/2019)