



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).Nos.500 & 501 of 2014  
and  
M.P(MD).Nos.1 & 1 of 2014

United India Insurance Company Ltd.,  
Rep. by its Divisional Manager,  
7-A, West Veli Street,  
Madurai - 625 001.

... Appellant in both appeal/4th respondent  
in MCOP Nos.649 & 650 of 2009

Vs.

1. V.R.Manoharan ... 1st respondent in CMA(MD) No.500 of 2014/  
Petitioner in MCOP No.649 of 2009

1.Minor V.M.Banu @ Banupriya,  
Minor rep. by her father and natural guardian  
V.R.Manoharan

... 1st respondent in CMA(MD) No.501 of 2014/  
Petitioner in MCOP No.650 of 2009

2.Ramanathan

3.ICICI Lambard General Insurance Co. Ltd.,  
Rep. by its Branch Manager,  
Near Canara Bank, A.A.Road,  
Gnanaolivupuram, Madurai - 10.

4.Abdul Rahman ... Respondents 2 to 4 in both appeal/ respondents  
1 to 3 in MCOP Nos.649 & 650 of 2009

COMMON PRAYER:- Appeals filed under Section 173 of the Motor  
Vehicles Act, against the common Judgment and Decree dated  
21.01.2013, made in MCOP Nos.649 & 650 of 2009 on the file of Motor  
Accidents Claims Tribunal, I Additional Sub Judge, Madurai.

In both appeal  
For Appellant : Mr.I.Suthakaran

For Respondents : Mr.M.P.Senthil - for R.1  
Mr.S.Srinivasa Raghavan - for R.3

COMMON JUDGMENT

As the issue involved in both the appeals are one and the same, they are disposed of by way of this common judgment.

2. Challenging the judgment and decree passed by the learned I Additional Sub Judge, (Motor Accidents Claims Tribunal), Madurai, in MCOP Nos.649 & 650 of 2009 dated 21.01.2013, both appeals have been preferred by the appellant/insurance company.

3. For the sake of convenience, the parties are being referred to by their ranks in CMA No.500 of 2014.

4. The case of the claimant/1st respondent, before the tribunal is that on 24.12.2008, he along with her daughter, who is the 1st respondent/ claimant in CMA.No.501 of 2014 was travelling in an auto rickshaw bearing Registration No.TN 65 E 9095 and the same was driven by its driver in a rash and negligent manner and when the auto was nearing Emneswaram SNV High School, a tractor bearing No.TN 65 F 0658 was proceeding from the opposite direction in a rash and negligent manner and lost his control over the vehicle and colluded head on with the auto rickshaw in the middle of the road and in consequence to the same, the claimants sustained injuries all over the body.

5. The tribunal, after analyzing all the facts and documentary evidences, has awarded Rs.1,10,000/- in MCOP No.649 of 2009 & Rs.1,05,000/- in MCOP No.650 of 2009 as compensation and gave a finding that the accident has occurred because of the contributory negligence and therefore, assessed the negligence on the part of the Auto - rickshaw's driver as 50% and tractor's driver as 50%. Thereby, the appellant/insurance company was directed to pay 50% of the said amount, i.e., Rs.55,000/- & Rs.52,500/-, respectively, against which, the appellant/insurance company is before this Court.

6. Heard the learned Counsel on either side and perused the records carefully.

7. Though several grounds are raised in the memorandum of grounds, the only ground on which the appellant insurance company has preferred this appeal is on negligence. As far as the negligence is concerned, the tribunal has discussed the same very elaborately in paragraph No.10 and the relevant portion reads thus,

"10. The copy of the F.I.R is marked as Ex.P.1. The copy of judgment is marked as Ex.R.4 and copy of charge sheet is marked as Ex.R.5. As per evidence of P.W.1 the accident took place in middle of the road. This will show that the accident is only because of the omissions and commissions of the drivers of the both vehicles. Accepting the evidence of the petitioners, it is held that the accident has taken

place only because of the rash and negligent driving of the drivers of the both vehicles. The point No.1 is answered accordingly."

On a mere reading of the above, this Court is of the view that the tribunal, after a careful analysis, has rightly fixed the negligence equally i.e., 50% on both the drivers of the vehicle namely, Tractor and Auto rickshaw and therefore, this Court is of the view that the same does not warrant any interference.

8. Since the very grounds, on which the appellant/Insurance Company has preferred this appeal, lack merits, the appeal is liable to be dismissed and the same is accordingly dismissed. The award passed by the tribunal in MCOP Nos.649 & 650 of 2009 dated 21.01.2013, is hereby confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The I Additional Sub Judge,  
Motor Accidents Claims Tribunal,  
Madurai.

COPY TO:

The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai. **(Two Copies)**

+2cc to M/S.I.Suthakaran, Advocate SR.No. 61375 & 61376

+1cc to M/S.S.Srinivasa Raghavan, Advocate SR.No. 61765

+2cc to M/S.M.P.Senthil, Advocate SR.No. 61488 & 61490

C.M.A(MD) .Nos.500 & 501 of 2014  
13.04.2018

rm

JM/KKR/SAR 4/14.05.2018/3P/9C