



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.570 of 2014
and
M.P(MD)No.1 of 2014

National Insurance Company Limited,
Through its Divisional Manger,
Tenkasi Road,
Rajapalayam.

... Appellant/Respondent No.4

vs.

1) Sasirani
2) Allimuthu
3) Rajalakshmi

... Respondents 1 to 3/
Petitioners 1 to 3

4) Anthoniraj
5) Iffco-Tokio General Insurance Company Ltd.,
Through its Manager,
Chandra Gandhi Nagar, Ponmeni,
Bye-pass Road, Madurai.
6) The Director,
Dr.Ambedkar Province Academy Kasthuri Illam,
PTC Post, Perungudi,
Madurai.

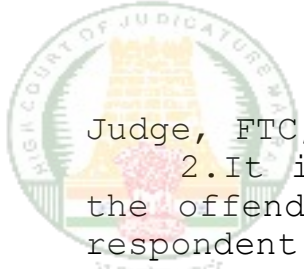
... Respondents 4 to 6/ Respondents 1 to 3

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award made in MCOP.No.59 of 2010 dated 03.11.2010 on the file of Motor Accidents Claims Tribunal, Additional District Judge, FTC, Virudhunagar.

For Appellant	: Mr.D.Sivaraman
For R1 to R3	: Mr.M.Suri
For R4 to R6	: No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and award made in MCOP.No.59 of 2010 dated 03.11.2010 on the file of Motor Accidents Claims Tribunal, Additional District



Judge, FTC, Virudhunagar.

2.It is a case of fatal. The 4th respondent is the owner of the offending vehicle namely, Tractor and its insurer is the 5th respondent. The 6th respondent is the owner of the Trailer and the appellant herein is the insurer of the Trailer. The Tribunal considering the oral and documentary evidence, fixed negligence on the driver of the Tractor and fastened liability in the ratio of 50:50 as between the 5th respondent and appellant insurance companies and awarded compensation of Rs.4,29,000/- with interest at 7.5% per annum. Aggrieved by the said award, the appellant has filed this appeal.

3.Though the appellant who is the insurer of the Trailer, has filed this appeal challenging liability and quantum, learned counsel for the appellant has restricted his submissions only to the aspect of liability, contending that the Tractor alone hit the deceased and the Trailer was not involved in the accident and therefore, the appellant is not liable to pay compensation to the claimants. He further submitted that RW1-driver of the Tractor himself has admitted that the Tractor alone hit against the deceased and therefore, the learned Judge ought to have fastened entire liability on the insurer of the Tractor.

4.Though notice was served on the 5th respondent, there is no representation on their behalf. Hence, this Court is constrained to pass orders on merits.

5.In my considered opinion, the insurer of the Trailer/appellant herein cannot be fastened with any liability. The finding of the learned Judge fixing liability in the ratio of 50:50 as between the insurers of Tractor and Trailer cannot be countenanced as the Tractor is always attachable with the Trailer and without the Tractor, Trailer cannot move. Further, PW2 who is an eyewitness has deposed that the accident had occurred due to the rash and negligent driving of the driver of the Tractor. Therefore, the learned Judge ought to have fastened entire liability on the insurer of the Tractor.

6.Accordingly, the award of the Tribunal is modified to the effect that the entire liability to pay compensation is fastened on the 5th respondent company who is the insurer of the Tractor. The 5th respondent company is directed to deposit the entire award amount with proportionate accrued interest and costs to the credit of the claim petition within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3/claimants are permitted to withdraw their shares with proportionate accrued interest without filing any formal petition.



The Civil Miscellaneous Appeal is accordingly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(T&P)

/True copy/

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Sub Assistant Registrar

To

The Judge,
Motor Accidents Claims Tribunal,
Additional District Judge, FTC,
Virudhunagar.

Copy to:
The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1cc to Mr.M.SURI, Advocate, SR.No. 61745
+1cc to Mr.D.SIVARAMAN, Advocate, SR.No.61687

CMA(MD)No.570 of 2014
17.04.2018

BALA
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