



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 15.11.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A. (MD) .No.1096 of 2016

and

C.M.P. (MD) .No.9840 of 2016

Branch Manager,
I.C.I.C.I. Lombard Motor Insurance Company Limited
Office,
United Arcade 3rd Floor - II,
New Karur Bypass Road,
Annamalai Nagar,
Trichy 620 018.

... Appellant/2nd Respondent

-Vs-

1.Yogaraj
2.Rengaraj
3.Rathinavel

... 1st & 2nd Respondents/Petitioners

... 3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 07.04.2015 in M.C.O.P.No.394 of 2013 on the file of the Special District Judge, Trichy (FTC- II) cum Motor Accident Claims Tribunal, Trichy.

For Appellant : Mr.K.K.Ramakrishnan

For R1 and R2 : Mr.N.Sudhagar Nagaraj

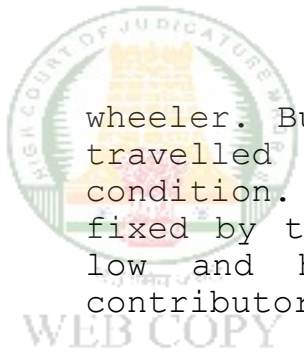
For R3 : No appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the Insurance Company against the award passed by the Motor Accident Claims Tribunal / the Special District Judge, Trichy (FTC-II), Trichy in M.C.O.P.No.394 of 2013, dated 07.04.2015.

2. The Tribunal has fixed 20% contributory negligence against the rider of the two wheeler and 80% against the appellant/Insurance Company. Against the fixation of the contributory negligence, the present appeal has been filed by the Insurance Company.

3. The learned counsel appearing for the appellant/Insurance Company contended that two persons can be travelled in a two



wheeler. But however, in the present case, three persons have been travelled in the two wheeler and it is a violation of policy condition. Therefore, he contended that the contributory negligence fixed by the Tribunal against the rider of the two wheeler is too low and hence, he insists this Court to fix at least 30% contributory negligence against the rider of the two wheeler.

4. However, the learned counsel appearing for the respondents 1 and 2 submitted that in similar circumstances, the Hon'ble Division Bench of this Court, in C.M.A.No.1642 of 2015, dated 26.06.2018, has fixed only 5% contributory negligence. The learned counsel appearing for the respondents 1 and 2 fairly submitted that the liability fixed by the Tribunal may be confirmed and he has not disputed the contributory negligence fixed against the rider of the two wheeler.

5. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the respondents 1 and 2 and perused the materials available on record.

6. On perusal of the judgment of the Division Bench of this Court, it is seen that even though more than two persons were travelled in that case, the Tribunal has fixed 5% contributory negligence against the rider of the two wheeler and fixed 95% against the driver of the lorry. When that being the case, the Tribunal has fixed 20% contributory negligence against the rider of the two wheeler for the reason that three persons were travelled in the two wheeler. The learned counsel appearing for the respondents 1 and 2 also fairly submitted that 20% contributory negligence fixed against the rider of the two wheeler may be confirmed. In such circumstances, this Court is of the view that there is no infirmity in the order passed by the Tribunal and there is no merit in the appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed and the award passed by the Motor Accident Claims Tribunal / the Special District Judge, Trichy (FTC-II), Trichy in M.C.O.P.No.394 of 2013, dated 07.04.2015 is confirmed.

7. In view of the dismissal of the appeal, the appellant/Insurance Company is directed to deposit the entire award amount along with interest at the rate of 7.5 % per annum from the date of claim petition till the date of deposit, 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 being made, the Tribunal is directed to transfer the said amount directly to the Personal Savings Bank Account Number of the claimants by way of RTGS/NEFT system, after getting their Account Details, within a period of three weeks thereafter. In case, if the award amount is already deposited, the Tribunal is directed to transfer the entire amount to the claimants account by way of RTGS/NEFT within a period of three weeks from the date of receipt of a copy of this judgment.



No costs.
closed.

Consequently, the connected Miscellaneous Petition is

Sd/-

Assistant Registrar (CS-III)

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// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The Special District Judge (FTC- II) cum
Motor Accident Claims Tribunal,
Trichy.

Copy to:

The Section Officer,
VR Section, (2 copies)
Madurai Bench of Madras High Court, Madurai

+1 CC to Mr.N.SUDHAGAR NAGARAJ, Advocate (SR-99173[F] dated
18/11/2019)

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MK (12.02.2020) 3P 5C