

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.1118, 1120 and 1170 of 2013

R.Poongodi ... Appellant in CMA.1118/2013

S.Velautham ... Appellant in CMA.1120/2013

P.Ranganathan ... Appellant in CMA.1170/2013

Vs.

1. R.Senthil

2. J.Kamaraj

3. M/s.National Insurance Co Ltd.,
Door No.78, Thiruvencatasamy Chetti Street,
Erode. ... Respondents in all the appeals.

Prayer: These Civil Miscellaneous Appeals are
filed under Section 173 of Motor Vehicles Act, 1988, against the
judgment and decree made in MCOP.Nos.222, 220 and 221 of 2007
dated 28.09.2011 on the file of the Motor Accident Claims
Tribunal, II Additional Subordinate Judge, Erode.

For Appellant : Mr.MA.P.Thangavel.
For Respondents : RR1 and 2 - Set exparte.
R3 - Mr.D.Bhaskar.

COMMON JUDGMENT

The appellants who are the claimants filed these appeals
for enhancement of compensation.

2. On 04.07.2010 at about 4.50am the appellants were riding
a motor cycle XL super bearing Registration No.TN38-AB-3882 at
Sakthi Road Soolai in front of Yasmine Hotel, at that time,
Eicher van bearing registration No.TN33-M-9649 coming in the
opposite direction in rash and negligent manner hit the
appellants vehicle and caused the accident. The injured were
taken to Government Hospital, Erode and thereafter they were
shifted to Erode Trust hospital for further treatment.

3. The third respondent/insurance company submits that at
the time of accident the claimants/three persons were traveling

in the TVS 50 and there is no chance to control the vehicle, the two wheeler is designed only for two persons, there wont be any balance if three persons travel in the two wheeler. The driver of the Eicher van drove the vehicle in steady manner from east to west, at that time, the rider of the TVS 50 coming from south to north crossed the road towards eastern side without seeing the van and dashed on the eicher van. The rider of the motorcycle violated the traffic rules and regulations and invited the accident.

4. In order to prove the case of the claimants, the claimants were examined themselves as PW1 to PW3 and the Doctor was examined as PW4 and marked Ex.P1 to Ex.P23. No oral and documentary evidence has been marked on the side of the respondents.

5. Heard the rival submissions made on both sides and perused the materials available on record.

6. The learned counsel for the appellant submits that the Court below fixed 50% towards contributory negligence. The counsel for the appellant submits that due to the stomach pain to one of the pillion rider/Ranganathan they proceeded to hospital in a two wheeler, at that time, the eicher van coming from east to west in rash and negligent manner hit the TVS 50. Further, the learned counsel submitted that under the compelling situation all the three claimants had travelled in the two wheeler for taking one of the claimants to the hospital for stomach pain, but the learned counsel is not in a position to produce any medical records to prove the same with sufficient medical records. Hence, this Court is not inclined to accept the reason putforth by the counsel for the appellants.

7. It is the admitted fact, the seating capacity of the TVS 50 is two persons and at the time of accident three persons were travelling in the two wheeler has been proved and the Court below has rightly held that the contributory negligence on the part of the appellants herein.

8. The trial Court fixed the 50% towards contributory negligence, based on the evidence of PW1 to PW3 and stating that the TVS 50 cannot carry three persons and if they were travelling in such a manner the police would definitely catch them and impose penalty on them. The persons travelling in the TVS 50 would not have driven the two wheeler in rash and negligent manner as the loading capacity of the TVS 50 is only two persons, at the time of accident three persons were seated in the TVS 50. For fixing the negligence, the accident took place at around 4.30am, in the early hours no audience can be expected to witness the accident.

9. Upon considering the facts and circumstances of the cases on hand, this Court finds that the Tribunal has fixed the contributory negligence in the ratio of 50:50 to the claimants and the insurance company is hereby modified to the ratio of 40:60 to the claimants and the insurance company. The same is shown in the table given under :-

Case Nos.	Amount awarded by the Tribunal	40% by the claimant	60% by the insurance company
MCOP.No.220 of 2010	74,000	29,600	44,400
MCOP.No.221 of 2010	96,000	38,400	57,600
MCOP.No.222 of 2010	22,100	8,840	13,260

10. With the above modification, all the civil miscellaneous appeals are partly allowed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
II Additional Subordinate Judge, Erode.

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

+1 cc to Mr.D.Bskaran,advocate,sr.190

+1 cc to M/s.Ma.P.Thangavel, Advocate,sr.598.

Mr (co)
krd 28/12

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