



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.10.2020

PRONOUNCED ON : 16.10.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.1563 & 1564 of 2010

and

M.P.No.1 of 2010

(Through Video Conferencing)

National Insurance Company Ltd.,  
Anuradha Complex,  
Bangalore Road,  
Krishnagiri District.

.. Appellant in both C.M.As./3<sup>rd</sup>  
Respondent in both the MCOPs

vs.

S.Ragul ..1<sup>st</sup> Respondent in C.M.A.No.1563 of 2010/  
Petitioner in MCOP.286/2008

S.Badhusha .. 1<sup>st</sup> Respondent in C.M.A.No.1564 of 2010/  
Petitioner in MCOP.287/2008

2.D.Govindarajan

3.G.Vedhavalli ... Respondents 2 & 3 in both C.M.As./  
Respondents 1 & 2 in both the MCOPs

(2<sup>nd</sup> and 3<sup>rd</sup> respondents exparte  
before the Tribunal)

Civil Miscellaneous Appeals filed under Section 173 of  
Motor Vehicles Act, 1988 against the Judgment and Decree in  
M.C.O.P.Nos.286 & 287 of 2008, dated 17.03.2010, on the file of  
the Motor Accidents Claims Tribunal ( Sub Court) Dharapuram.

For Appellants : Mr.D.Baskaran  
(in both C.M.As.)

For 1<sup>st</sup> respondent : Mr.Ma.P.Thangavel  
(in both C.M.As.)

For 3<sup>rd</sup> respondent : No Appearance



## COMMON JUDGMENT

By this common Judgment, both the Civil Miscellaneous Appeals are being disposed.

2. These appeals have been filed by the appellant - Insurance company against the common judgment and two separate decrees dated 17.03.2010, passed by the Motor Accidents Claims Tribunal (Sub Court) Dharapuram in M.C.O.P.Nos.286 & 287 of 2008.

3. By the impugned common judgement and two separate decrees dated 17.03.2010, the Tribunal has allowed the claim petitions and has awarded a sum of Rs.3,17,560/- along with interest at 7.5% p.a. as compensation in M.C.O.P.No.286/2008 (impugned in C.M.A.No.1563 of 2010) and Rs.1,98,058/- along with interest at 7.5% p.a. as compensation in M.C.O.P.No.287 of 2008 (impugned in C.M.A.No.1564 of 2010).

4. In both the appeals, the appellant Insurance Company has questioned the compensation awarded by the tribunal in the respective claim petitions.

5. The order of the Tribunal is challenged mainly on the ground that the Tribunal erred in awarding the aforesaid compensations to the respective claimants ( the 1<sup>st</sup> respondent in the respective appeals) even though Ex.R2 marked through RW2 clearly demonstrated that the 1<sup>st</sup> respondent in the respective appeals as rider and the pillion rider came to the eastern side of the road i.e to the other side of the Road and collided the motorcycle driven by them against the insured van and therefore caused accident. It is therefore submitted that they are the tort feisor and therefore the Tribunal wrongly fastened liability on the appellant Insurance Company.

6. Under the circumstances, the Insurance Company prayed for setting aside impugned judgement and decrees awarding compensation to the respective respondents. It is further submitted that merely because criminal complaint was lodged against the driver of the insured van by itself was not a sufficient ground to conclude negligence on the part of the driver of the insured van.

7. Assailing the impugned common judgement and separate decrees passed by the Tribunal, the learned counsel for the appellant submits that the impugned Judgment and decreed were liable to be set aside as the respective claimants viz 1<sup>st</sup>



respondent in the respective appeals had failed to prove negligence on the part of the driver of the insured van before the Tribunal.

8. The impugned common judgement and respective decrees are defended by the counsel for the 1<sup>st</sup> respondent (claimant) in the respective appeals. It is submitted that the Tribunal has given a categorical finding and it cannot be disturbed in these appeals. It was further submitted that the submission of the learned counsel for the appellant was contrary to the evidence on record before the Tribunal.

9. I have perused the records. Evidence on record suggests that the total width of the road was about 25 ft. where the accident is said to have taken place only. There are no witnesses to confirm as to who was negligent and who caused the accident. The Tribunal can only go by evidence on record and preponderance of probability and arrive at a proper conclusion of fact.

10. It would be incorrect to surmise that motorcycle on which the respective claimants were riding as rider and pillion rider were not negligent, in the light of Ex.R2- Rough Sketch.

11. In my view, the conclusion drawn by the Tribunal based on the evidence on record that the insured van was driven in a rash and negligent manner appears to be an incorrect assessment of facts as to what would have happened at the time when the accident took place Ex.R.2 which was produced for my perusal clearly shows the rider of the motorcycle was negligent. The motorcycle had come to the other side of the road. It thus shows that the motorcycle was driven in a rash and negligent manner.

12. Therefore, in my view, the appellant Insurance Company has made out a case for interfering with the findings rendered by the Tribunal.

13. The Tribunal therefore erred in awarding the compensation to the respective claimants. Under these circumstances, compensation awarded by the Tribunal is set aside. Accordingly, the respective appeals filed by the Insurance Company are liable to be allowed.

14. In case, if the appellant Insurance Company has already deposited the compensation awarded by the Tribunal in the respective M.C.O.Ps., the appellant-Insurance Company is permitted to withdraw the award amount together with interest thereon, by filing suitable applications before the Tribunal.



15. In view of the above observation, these civil miscellaneous appeals are allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

kkd

Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

1.The Motor Accidents Claims Tribunal,  
(Sub Court) Dharapuram.

2.The Section Officer,  
VR Section, High Court of Madras.

C.M.A.Nos.1563 & 1564 of 2010  
and M.P.No.1 of 2010

SPD(CO)  
CB(17/08/2021)