



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 12.02.2021**

**CORAM:**

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM**

**C.M.A(MD)No.747 of 2010**

**and**

**M.P(MD)No.2 of 2010**

The Branch Manager  
M/s.United India Insurance Co., Ltd.,  
Marthandam  
Kanyakumari District. ...Appellant/3<sup>rd</sup> Respondent

-vs-

1.Rajan  
2.Jeyalakshmi ... Respondents 1&2/Claimants  
3.A.Pitchai Chettiar ...3<sup>rd</sup> Respondent/1<sup>st</sup> Respondent  
4.M.Prakash  
5.Vijayaraj  
6.S.Vijaya Mary  
7.the Branch Manager  
M/s.National Insurance Co., Ltd.,  
No.112, North Car Street,  
Nagercoil District. ...Respondents 4 to 7/  
Respondents 2,4 to 6

**PRAYER** : Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1998, against the award the Judgment and decree dated 14.10.2009 made in M.C.O.P.No.84 of 2004 on the file of the Motor Accident Claims Tribunal (Sub-Court), Kuzhithurai.

For Appellant : Mr.B.Rajesh Saravanan  
For R1 & R2 : Mr.P.Muthukumar  
for Mr.K.Sreekumaran Nair  
For R3 &R4 : Mr.K.Neelamegam  
For R6 : Mr.Jeen Joseph  
For R7 : Mr.N.Murugesan  
For R5 : No appearance

**JUDGMENT**

The appellant challenges, in this appeal, the judgment and order passed by the Motor Accident Claims Tribunal (Sub-Court), Kuzhithurai, in M.C.O.P.No.84 of 2004.



2.The parents of the deceased minor Geerthana(3months old) claimed compensation of Rs.2,50,000/-. According to them, on 22.01.2004, the second claimant along with her brother Kannan alias Rajasekaran was carrying the deceased in a Auto-Rickshaw from Vellivilagom to their house situated at Paravilai in Marthandam. At about 5.15 a.m., a lorry bearing Registration Number TNK 7666, owned by the second respondent and insured with the appellant, dashed against the Auto-Rickshaw. Due to the impact, the deceased Geerthana, who was on the lap of the said Kannan alias Rajasekaran was thrown away from the vehicle and sustained injuries. When the said child was taken to hospital, on the way she passed away.

3.It is the contention of the appellant before the Tribunal that the driver of the Auto-Rickshaw was responsible for the accident and since he had no valid driving license, the claim was wrongly fixed against the insurer of the lorry. P.W.1 and P.W.2 were the passengers travelled in the auto-rickshaw at the time of the accident and they have narrated the manner of the accident in their evidence. First Information Report was produced as Ex.P.1. Ex.P.2 and Ex.P.3 are the observation Magazar and rough sketch. On the basis of the above said evidence, the Tribunal came to the conclusion that the driver of the lorry is the responsible for the accident.

4.Mr.B.Rajesh Saravanan, learned counsel appearing for the appellant would argue that both the drivers were equally responsible for the accident, but the claimants shifted the entire liability on the driver of the lorry for the sole reason that the Auto-Rickshaw had no insurance coverage and the driver of the Auto-rickshaw also was not having license. The learned counsel drew the attention of this Court to Page No.23 of the Typed-set of papers to show that final report has been filed against both the drivers and hence, the liability has to fix on both the drivers of the vehicle.

5.Mr.Murugesan, learned counsel appearing for the seventh respondent/Insurance Company would submit that the First Information Report was filed only against the driver of the lorry and the final report was not produced before the Tribunal and hence, the final report cannot be looked into to decide the question of negligence. It is the contention that both the eye witnesses P.W.1 and P.W.2 have stated that the accident happened only to the negligence of the driver of the lorry.

6.In the matter on had, it is appropriate to note that no contra evidence was adduced on behalf of the Insurance Company to substantiate their cases. The Tribunal on proper appreciation of



evidence, in my view, rightly came to the conclusion that the accident occurred due to the negligence of the driver of the lorry. For the death of the child, the Tribunal has awarded compensation in total a sum of Rs.2,28,000/-, which appears to be fair and reasonable and hence, no interference is required in this appeal. In that view, this Civil Miscellaneous appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

7.The appellant/Insurance Company is directed to deposit the entire award amount together with accrued interest and costs, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the award amount so deposited with accrued interest and costs, less the amount already withdrawn, if any, by filing a formal petition before the Tribunal.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To:

1.The Sub Judge, Motor Accident Claims Tribunal,  
Kuzhithurai.

2.The Record Keeper,(2 copies)  
Vernacular Section,  
Madurai Bench of Madras High Court,Madurai.

+1 CC to Mr.N.MURUGESAN, Advocate ( SR-5247[F] dated 16/02/2021 )

+1 CC to Mr.B.RAJESH SARAVANAN, Advocate ( SR-5072[F] dated 15/02/2021 )

+1 CC to Mr.K.SREEKUMARAN NAIR, Advocate ( SR-5435[F] dated 16/02/2021 )

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KM (25.03.2021) 3P 7C

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