

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

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| RESERVED ON  | 29.11.2021 |
| DELIVERED ON | 21.12.2021 |

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**CORAM :****THE HONOURABLE MRS.JUSTICE S.ANANTHI****C.M.A. (MD) .No.268 of 2021****and****C.M.P. (MD) Nos. 2257 & 8990 of 2021**

The Branch Manager,  
The Oriental Insurance Company Limited,  
Office at 1<sup>st</sup> Floor, Loyolla Building,  
Salai Road,  
Dindigul - 624 001.

...Appellant/2<sup>nd</sup> Respondent

Vs.

1.Nallammal  
2.Chithambaram  
3.Rajaganesan  
4.K.Selvaraj

...R-1 to R-3/1-3 Petitioners

...4<sup>th</sup> Respondent/1<sup>st</sup> Respondent[4<sup>th</sup> respondent remained exparte before the Court below]

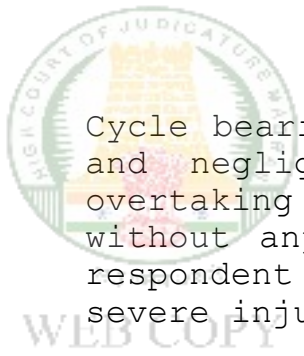
**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree in M.C.O.P.No.521 of 2016 dated 02.03.2020, on the file of the learned Motor Accident Claims Tribunal cum Principal District Judge (Presiding Officer), Dindigul.

|                |                      |
|----------------|----------------------|
| For Appellant  | :Mr.E.Chandrasekaran |
| For R-1 to R-3 | :Mr.A.Saravanan      |
| For R-4        | :No Appearance       |

**ORDER**

This Civil Miscellaneous Appeal has been filed to set aside the Judgment and Decree, dated 02.03.2020 in M.C.O.P.No.521 of 2016, passed by the learned Motor Accident Claims Tribunal cum Principal District Judge(Presiding Officer), Dindigul.

2. It is a case of accident. On 22.12.2015 at about 08.00 a.m., when the deceased Murugesan @ Murugan was travelling in a Hero Honda Splendor Motor Cycle bearing Regn. No.TN-59-AJ-2880 as a pillion rider, which was driven by one Karthick, from Dindigul to Natham Main road, near Alagrnayakkam Patti Cross, R.M.T.C. Nagar. At that time, the 4<sup>th</sup> respondent herein drove a Bajaj Discover Motor



Cycle bearing Regn.No.TN-57-AE-9536 in the same direction in a rash and negligent manner and without following traffic rules and overtaking the deceased Motor Cycle and immediately turn right side without any signal, the rider of the deceased hit against the 4<sup>th</sup> respondent two wheeler. Due to the accident, the deceased sustained severe injuries in his head and shoulder and died.

3.The claimants have filed a claim petition in M.C.O.P.No.521 of 2016 on the file of the learned Motor Accident Claims Tribunal/Principal District Court, Dindigul, seeking compensation.

4.Before the Tribunal, on the side of the claimant two witnesses were examined as P.W.1 & 2 and marked four documents as Exs.P.1 to P.4 and two witnesses were examined as R.W.1 & R.W.2 and marked Ex.R.1 & Ex.R.2.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and the respondent and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent manner of the rider of two wheeler and directed the appellant/insurance company to pay a sum of Rs.8,07,600/-as compensation. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed.

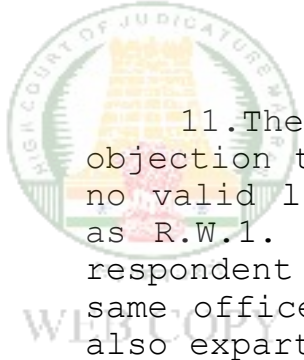
6.Heard on either side. Perused the material documents available on record.

7. This Civil Miscellaneous Appeal has been filed on the ground of liability fixed by the Tribunal.

8.The claimants have filed a petition in M.C.O.P.No.521 of 2016 before the Tribunal seeking compensation for the death of husband of the 1<sup>st</sup> claimant, who died in road accident occurred on 22.12.2015 at 08.00 a.m., when the deceased travelling in a Hero Honda as pillion rider, The 4<sup>th</sup> respondent herein drove a Bajaj Discover Motor Cycle bearing Regn.No.TN-57-AE-9536 rashly and negligently over take the Hero Honda and without any signal he suddently turned the vehicle and dashed with the Hero Honda. The deceased sustained severe injuries and died.

9.The tribunal has awarded a sum of Rs.8,07,600/-and directed the appellant/insurance company to pay the compensation. Aggrieved by the said award passed by the tribunal, the appellant/insurance company is before this Court.

10.The First Information Report was registered against the 4<sup>th</sup> respondent herein only and charge sheet was also filed against him. There is no contra evidence to prove that the driver of the Hero Honda is also responsible for the alleged accident.



11.The learned counsel appearing for the appellant raised an objection that at the time of accident, the 4<sup>th</sup> respondent herein has no valid licence. A staff from RTO Office, Dindigul, was examined as R.W.1. As per his evidence, licence was not issued to the 4<sup>th</sup> respondent from his office. R.W.1 has also admitted that in the same office, the 4<sup>th</sup> respondent can get licence. The 4<sup>th</sup> respondent also exparte in the claim petition before the Court below.

12.The evidence given by R..W.1 who is working in the RTO Office, is not sufficient to prove that the 4<sup>th</sup> respondent has no valid licence.

13.Since the deceased as a pillion rider of Hero Honda not offending vehicle, the insurance company is liable to pay compensation.

14.Therefore, the tribunal has rightly fixed liability on the appellant/insurance company. The quantum of award is not disputed. This Court has no valid reason to interfere with the award passed by the Court below.

15.Finally, this Civil Miscellaneous Appeal stands dismissed by confirming the award and decree, dated 02.03.2020 in M.C.O.P.No.521 of 2016, passed by the learned Motor Accident Claims Tribunal cum Principal District Judge(Presiding Officer), Dindigul. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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**Note:**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

The Principal District Judge(Presiding Officer),  
Motor Accident Claims Tribunal cum  
Dindigul.



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+1 CC to M/s.E.CHANDRASEKARAN, Advocate ( SR-40122[F] dated 23/12/2021 )

+1 CC to M/s.A.SARAVANAN, Advocate ( SR-39664[F] dated 21/12/2021 )

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21.12.2021

TP (CO)

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