



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22.12.2021

CORAM

THE HONOURABLE **MRS. JUSTICE S. ANANTHI**

CMA. (MD) No. 213 of 2019

and

CMP. (MD) No. 2912 of 2019

The Divisional Manager,
Shri Ram General Motor Insurance Company Ltd.,
Kamala Street, Chokkikulam,
Madurai-2. ... Appellant/2nd Respondent

Vs.

1.M.Vijayalakshmi

2.Minor.V.Yaswanth

3.Minor.V.Elancheran

(Minor respondents represented by their mother and guardian first respondent)

4.K.Nagamuthu

5.N.Pappathy ... Respondents 1 to 5/Petitioners 1 to 5

6.Nizam Habi Bullah ... 6th Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment dated 06.02.2017 made in MCOP.No.2035 of 2015 on the file of the Motor Accident Claims Tribunal/District and Sessions Judge/Communal Clash Cases Court, Madurai and allow this civil miscellaneous appeal.

For Appellant	: Mr.G.Maruthaiah
For R1, R4 & R5	: Mr.V.R.G.Mohan
For R6	: No Appearance

JUDGMENT

The appellant filed this appeal to set aside the decree and judgment dated 06.02.2017 made in MCOP.No.2035 of 2015 on the file of the Motor Accident Claims Tribunal/District and Sessions Judge/Communal Clash Cases Court, Madurai.



2.The facts of the case are that on 13.03.2015, when the deceased drove the two wheeler bearing registration No.TN 57 AV 9292 along with one Mahudeeswaran as pillion rider from Vadamadurai to Vedasandur Road from south to north direction, the sixth respondent's driver drove the lorry bearing registration No.TN28 Z 5859 in the opposite direction i.e. north to south direction in a rash and negligent manner and dashed against the deceased two wheeler. Due to the same, the deceased and the pillion rider were thrown away from the vehicle and the deceased sustained grievous head injury and injuries all over the body. Immediately, the deceased was taken to the hospital, but, however he died on 03.04.2015. Therefore, the legal heirs of the deceased filed MCOP.No.2035 of 2015 seeking compensation. The Tribunal, after analyzing the submissions and the evidences on either side, has awarded compensation of Rs.19,24,971/- with 7.5% interest and cost.

3.The appellant/Insurance Company has filed the present appeal to set aside the award passed in MCOP.No.2035 of 2015 on the ground that the accident was occurred only due to the negligence of the deceased, since he was under the influence of alcohol and as per the certificate issued by the hospital, the two wheeler dashed against the parked vehicle. Hence, the learned counsel for the appellant prayed that contributory negligence has to be fixed on the deceased.

4.It is seen from the certificate issued by the hospital that the deceased was under the influence of alcohol, at the time of accident. However, FIR was registered as against the driver of the lorry and on perusal of the rough sketch shows that accident took place in the extreme end of the road. Hence, it is proved that the accident was occurred only due to the negligence of the driver of the lorry. Since it is seen from the records that the deceased was under the influence of the alcohol and the learned counsel for the appellant argued that some negligence may be fixed on the deceased, this Court decides to fix 10% negligence on the part of the deceased. This Court confirmed the quantum awarded by the Tribunal and 90% liable is fixed on the appellant.

5.In view of the above, appellant/Insurance Company is directed to deposit 90% of the award amount at the rate of 7.5% per annum from the date of petition. It is reported that entire award amount has already been deposited. The appellant/Insurance Company is permitted to withdraw the excess amount. The claimants are permitted to withdraw the deposited amount. The second and third respondents are aged 15 years and 14 years during 2015 when claim petition was filed and now they would have attained majority and hence, they are permitted to withdraw their share with proportionate interest by filing necessary application before the Tribunal, discharging guardianship.



6.In the result, this civil miscellaneous appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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// True Copy //

/ /2022

Sub Assistant Registrar(CS)

gns

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 Motor Accident Claims Tribunal/District and Sessions Judge/Communal Clash Cases Court, Madurai

Copy to

The Section Officer, V.R.Section
Madurai Bench of Madras High Court, Madurai (2C)

CMA. (MD)No.213 of 2019
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MA (CO)
KB (05.01.2022) 3P 4C