

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	19.02.2021
Date of Judgment	08.06.2021

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLIC.M.A(MD)No.432 of 2018andCMP(MD)No.5345 of 2018

WEB COPY

The Branch Manager,
Iffco-Tokio General Insurance Company,
82, Preetham Plaza,
Ground Floor & 1st Floor,
Chandragandi Nagar,
Ponneri, Madurai.

: Appellant/3rd Respondent

Vs.

1.Vellathai

2.Minor Anusiya

3.Minor Gopinath

4.Minor Arunkumar

(Minor respondents 2 to 4 are
represented through their
Mother, the 1st respondent
herein)

5.Amaravathi

: R1 to R4/Petitioners

6.Jesentha

7.C.Chandran

: R6 and R7/R1 and R2

PRAYER:- Civil Miscellaneous Appeal has been filed under
Section 173 of the Motor Vehicles Act, 1988 against the award
passed by the Motor Accident Claims Tribunal (Principal District
Judge), Ramnad, in MCOP No.43 of 2014, dated 10.10.2017.

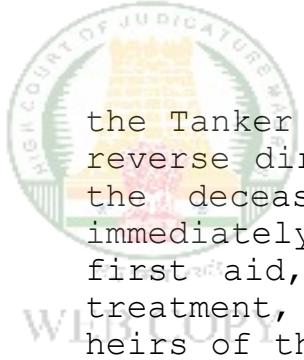
For Appellant : Mr.V.Sakthivel

For R1 to R5 : Mr.H.Velavadhas

For 7th Respondent : Mr.M.Ramasubramanian
(No appearance)For 6th Respondent : No appearance**J U D G M E N T**

This Civil Miscellaneous Appeal has been filed challenging the
award passed by the Motor Accident Claims Tribunal (Principal
District Judge), Ramnad, in MCOP No.43 of 2014, dated 10.10.2017

2.The short facts of the case is that on 25.05.2013 at about
8.45 pm, near Oliyullah Dharga on the road between Sayalkudi and
Iruvell village, when the deceased Govindaraj riding the motor cycle
TN-65-X-1981, at that time, the Tractor (TN-57-M-2337) attached with



the Tanker (TN-59-AL-0496) moved suddenly without any caution on the reverse direction and hit against the two wheeler. In that process, the deceased sustained severe injuries all over the body and immediately, he was taken to Ramnad Government Hospital and after first aid, he was taken to Madurai Vikram Hospital, for better treatment, where he succumbed to injury, on 26.10.2013. The legal heirs of the deceased filed a claim petition seeking compensation of Rs.12,00,000/- on the ground that the driver of the Tractor was responsible for the accident.

3.The claimants have stated that the deceased was 38 years at the time of accident and he was doing agricultural work, thereby he was earning Rs.10,000/- per month. It is alleged that the said Govindaraj died only due to the negligent driving of the Tractor driver.

4.In the counter filed by the Appellant Insurance Company, they disputed the manner of accident and their liability to pay compensation.

5.Before the tribunal, on the side of the claimants, 3 witnesses were examined and marked 8 documents. On the side of the Appellant Insurance Company, 2 witnesses were examined and 1 document was marked.

6.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the Tractor has caused the accident and awarded compensation of Rs.8,34,217/- together with interest @ 7.5% p.a. Aggrieved over the same, the appellant Insurance Company is before this court.

7.Heard the learned counsel appearing for either side and perused the materials available on record.

8.In this case, the dispute is only in respect of the negligence. Even though so many grounds were raised on the grounds of appeal, it is main contended by the learned counsel for the appellant Insurance Company/3rd respondent that at the time of accident, the tractor along with tanker was stationed on the extreme left side of the road without proper warning signal, but the deceased drove his vehicle in a negligent manner and dashed against the stationed tractor and there was negligence on the part of the deceased also, but the tribunal fastened the entire negligence on the part of the driver of the tractor and hence, the negligence fixed by the tribunal is not correct and prays that the Civil Miscellaneous Appeal has to be allowed. For that, the learned counsel appearing for the submitted the following rulings:-

(1) (2007) ACJ 536 (The Oriental Insurance

<https://hcservices.ecourts.gov.in/hcservices/> Company Limited Vs. Sri.D.Laxman and others);

(2) 2009 ACJ 264 (Nagamma and others Vs.



R.Chandramma and others);

(3) 2009(1) TN MAC 638 (SC) (Raj Rani and others Vs. Oriental Insurance Company Limited and others);

(4) (2011) 2 ACJ 881 (The New India Assurance Company Limited Vs. Sinjini Gupta and others);

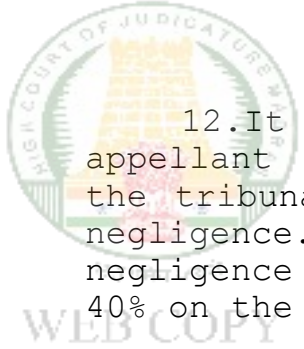
(5) 2020-1-Supreme 386 (Mohammed Siddique and another Vs. National Insurance Company Limited and others); and

(6) 2020-1-ALD(SC) 113 (Jumani Begam Vs. Ram Narayan and others).

9. On the side of the respondents 1 to 5/claimants, it is argued that the deceased drove his vehicle by following traffic rules, but the driver of the tractor drove the vehicle on the reverse without any signal and dashed against the two wheeler and due to it, the deceased died and hence, the tribunal fixed the entire negligence on the part of the driver of the Tractor and there is no negligence on the part of the deceased and prays that the Civil Miscellaneous Appeal has to be dismissed.

10. In this case, the wife of the deceased was examined as PW1 and the eye witnesses to the occurrence were examined as PW2 and PW3. In the claim petition, it is stated that the deceased drove his two wheeler in a normal speed and when he reached Oliyullah Dharga, at that time, the driver of the tractor drove the vehicle on the reverse and hit against the two wheeler of the deceased. But on perusal of Ex.P1, it is stated that when the tractor stationed in the road without signal, the deceased dashed on the rear right side wheel and fell down and sustained injury. To prove that the tractor with tanker parked with proper signal, no document was filed. Further it is to be noted that the complaint was not given by the injured and it was given by one Vijayakumar, in whose shop, brought some materials. But PW1 to PW3 categorically stated during their evidence that the tractor with tanker came in the reverse direction and dashed on the two wheeler, which came behind their vehicle. On careful perusal of the evidence of PW1 to PW3 and Ex.P1, it reveals that both the driver of the tractor and the rider of the two wheeler have negligently drove their vehicles. Hence, this fixed the negligence at the ratio of 60% on the driver of the tractor and 40% on the rider of the two wheeler namely the deceased.

11. It is the case of the claimants that only on the rear side of the tractor with tanker dashed against the two wheeler of the deceased. The tribunal, after proper consideration of the records has rightly come to the conclusion that the appellant/3rd respondent Insurance Company is liable to pay the compensation to the



12.It is to be noted that the learned counsel appearing for the appellant Insurance Company has not disputed the quantum award by the tribunal and he has challenged this appeal with regard to the negligence. Hence, as already decided, this court fixed the negligence at the ratio of 60% on the side of the tractor driver and 40% on the part of the deceased namely the rider of the two wheeler.

13.In the result, this Civil Miscellaneous Appeal is partly allowed. The negligence is fixed at the ratio of 60% on the part of the tractor Driver and 40% on the part of the deceased namely the rider of the two wheeler. The appellant Insurance Company is directed to deposit their apportionment of negligence amount of Rs.5,00,530/- fixed by this court before the tribunal together with interest @ 7.5% p.a. from the date of petition, till the date of deposit. On such deposit, all the claimants are entitled to get their respective share as per the apportionment of the tribunal. The appellant Insurance Company is at liberty to get back the excess amount, if any from the tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

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,

- 1.The Motor Accident Claims Tribunal/
The Principal District Court, Ramnad.
- 2.The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-19004[F] dated 08/06/2021)

CMA(MD) No.432 of 2018
08.06.2021

RD(25.08.2021) 4P 5C