



C.M.A(MD)No.1443 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.09.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE A.A.NAKKIRAN**

C.M.A.(MD)No.1443 of 2008

The Manager,
The New India Assurance Company Limited,
2nd Floor, No.204, Purasaiwalkam High Road,
Chennai 600 007. ... Appellant/4th Respondent

Vs.

1.Erakka Perumal
2.Rajeswari
3.Srinivasan ... Respondents 1 to 3/ Petitioners

4.Maragatham ... 4th Respondent/1st Respondent

5.The Manager,
National Insurance Company Limited,
No.1754/56, Manojiappa Street,
Thanjavur Town & Munsif,
Thanjavur District. ... 5th Respondent/2nd Respondent

6.The Manager,
South India Corporation Agencies Limited,
No.110, Annasalai,
Guindy, Chennai 600 032. ... 6th Respondent/3rd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying this Court to set aside or modify the order of the learned Tribunal in MCOP.No.79 of 2005 dated 20.12.2007



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on the file of the Motor Accidents Claims Tribunal, Additional District Sessions Court, Special Court for Essential Commodities Act, Thanjavur.

For Appellant : Mr.J.S.Murali

For Respondents : No appearance

(For R1 to R3, R4 & R6)

Mr.D.Sivaraman (for R5)

JUDGMENT

This Civil Miscellaneous Petition is filed to set aside or modify the order passed in MCOP.No.79 of 2005 dated 20.12.2007 on the file of the Motor Accidents Claims Tribunal, Additional District Sessions Court, Special Court for Essential Commodities Act, Thanjavur.

2. Brief facts of the case are as follows:

On 01.11.2003, while the claimants with deceased Ramesh was riding in a van bearing registration No.TN 49 F 1218, towards Tanjore, it dashed in a rash and negligent manner against the lorry bearing registration No.TN 09 AA 4635, which was not in motion on the road, which resulted, the said Ramesh was dead. Hence, the claimants filed MCOP.No.79 of 2005 before the Motor Accidents Claims Tribunal, Additional District Sessions Court, Special Court for Essential



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Commodities Act, Thanjavur, claiming compensation for a sum of Rs.30,00,000/-. The Tribunal, after considering the oral and documentary evidences and arguments made on either side, came to the conclusion that the respondents 1 to 4 in the claim petition are liable to pay compensation for a sum of Rs.2,25,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition. Aggrieved by the same, the appellant is before this Court.

3. The learned counsel appearing for the appellants submitted that the respondent drove the bicycle in the middle of the road and only he is responsible for the accident and the respondent drove the bicycle in a drunken mood. Therefore, there is no fault on the side of the Jeep driver. But, the Tribunal has wrongly come to a conclusion that the negligence is on the part of the Jeep and fixed the liability against the appellants.

4. Per contra, the learned counsel appearing for the Respondent argued that there are no documents filed to prove that the negligence is on the part of the respondent and hence, he seeks dismissal of this appeal.



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5. A perusal of the Motor Vehicle report shows that the damage is as “Ft.Bumber L/s corner bent (one feet towards rear) at the time of inspection and the damage is not an old one. Therefore, it is clear that the negligence is on the part of the Jeep driver. The learned counsel appearing for the appellants has not proved that the respondent drove the bicycle in a drunken mood. Therefore, this Civil Miscellaneous Appeal is dismissed.

6. As far as the quantum of compensation is concerned, the Tribunal has rightly awarded compensation to the claimants, which is payable by the Appellant and the fifth respondent. The other portion of the judgment remains the same.

7. The learned counsel appearing for the appellant submitted that the appellant had paid the entire amount as fixed by the Tribunal.

8. In view of the above submission, the appellant is entitled to withdraw 50% of the liability amount with accrued interest, if the entire amount is deposited by them as stated above. The fifth respondent herein is directed to pay the balance amount of liability, as apportioned by this



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Court, to the credit of M.C.O.P.No.79 of 2005, on the file of the Motor Accidents Claims Tribunal, Additional District Sessions Court, Special Court for Essential Commodities Act, Thanjavur, along with interest, at the rate of 7.5% per annum from the date of petition till date of realization and proportionate costs, within a period of four weeks from the date of receipt of a copy of this Judgment.

9. On such deposit being made, the claimants are entitled to withdraw their respective shares with accrued interest and costs, as apportioned by the Tribunal, less the amount already withdrawn, if any, by making necessary application before the Tribunal. No costs.

06.09.2022

Index :Yes/No
Internet :Yes/No
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To:

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- 1.Motor Accidents Claims Tribunal,
Additional District Sessions Court,
(Special Court for Essential Commodities Act),
Thanjavur.
- 2.The Manager,
National Insurance Company Limited,
No.1754/56, Manojiappa Street,
Thanjavur Town & Munsif,
Thanjavur District.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



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Judgment made in

C.M.A(MD)No.1443 of 2008

Dated:

06.09.2022