



C.M.A.(MD)Nos.319 and 440 of 2010

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DATED : 14.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A. NAKKIRAN

**C.M.A.(MD)Nos.319 and 440 of 2010 and
MP(MD).Nos.2 and 3 of 2010 in
C.M.A.(MD)Nos.319 and 440 of 2010**

United India Insurance Company Ltd.,
74, Salai Road,
Trichy -18

... Appellant in both CMAs

Vs.

1.R.Sundaram
2.S.Parameswari
3.N.Kadar Khan

4.M/s. Thirumala Exports,
No.52 10th Avenue,
Ashok Nagar,
Chennai – 600 083

5.National Insurance Company Ltd.,
Jerome Building,
Fort Station Road,
Trichy – 620 002.

(3rd and 4th respondent ex parte before Tribunal)

... Respondent/Petitioner in
CMA(MD).No.319 of 2010

1.Minor R. Kalpana
rep. by father L.Rathinam
2.N.Kadar Khan

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3.M/s. Thirumala Exports,
No.52 10th Avenue,
Ashok Nagar,
Chennai – 600 083

4.National Insurance Company Ltd.,
Jerome Building,
Fort Station Road,
Trichy – 620 002.
(2nd and 3rd respondent ex parte before Tribunal)

... Respondent/Petitioner in
CMA(MD).No.440 of 2010

COMMON PRAYER: Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree, dated 27.04.2009 made in M.C.O.P.No.1774 of 2005 and 1809 of 2005, on the file of the Motor Accident Claims Tribunal (III Additional Subordinate Judge), Thiruchirappalli.

For Appellant : Mr. C. Jawahar Ravindran
in both CMAs

For R2 in CMA(MD).No.319 /10
and R1 is CMA(MD).No.440/10 : Ms. J. Maria Roseline

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COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellant / Insurance Company against the Award, dated 27.04.2009 made



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in M.C.O.P.No.1774 of 2005 and 1809 of 2005, on the file of the Motor Accident Claims Tribunal (III Additional Subordinate Judge), Thiruchirappalli.

2.The appellant / Insurance Company is the 2nd respondent in both the M.C.O.P.Nos.1774 of 2005 and 1809 of 2005. The claimants filed a claim petitions before the Motor Accident Claims Tribunal (III Additional Subordinate Judge), Thiruchirappalli claiming a sum of Rs.4,00,000/- and Rs.1,50,000/- respectively as compensation.

3. According to the claimants, on 25.03.2005, Kalpana, Keerthana and Vadivel were travelling from Chathiram Bus Stand to Kallanai in a Auto bearing Regn.No.TN 63 A – 9140 belonging to 3rd respondent in CMA(MD)No. 319 of 2010 viz., Khadarkhan, which was insured with the appellant / Insurance Company and at that time the vehicle belonging to the 4th respondent in CMA(MD).No.319 of 2020 viz., Thirumalai Exports bearing Regn.No.TN 09 AH 5242 insured with the National Insurance Company Ltd., came from the opposite direction and dashed against the auto. In that accident, Keerthana died and Kalpana sustained grievous



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injuries. Hence, the parents of deceased Keerthana filed MCOP.No.319 of 2010 and the minor Kalpana, rep. by her father L. Rathinam, filed MCOP.No.1774 of 2005.

4. The Tribunal, considering the pleadings, oral and documentary evidence has come to the conclusion that Auto as well as Timber Lorry both are equally responsible for the accident and fixed the liability at 50% each and awarded a total sum of Rs.3,30,825/- and Rs.1,04,505/- respectively as compensation.

5. Aggrieved by the liability fixed by the Tribunal, the appellant / Insurance Company has filed the present Civil Miscellaneous Appeals.

6. The learned counsel appearing for the appellant submitted that the driver of the Auto was examined as PW.3 and he has stated that he drove the vehicle in a careful manner and that the FIR was registered only against the Lorry Driver. Further, the lorry driver had also admitted his mistake and paid the fine amount. But, the Tribunal has wrongly held



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that both the vehicles caused accident and fixed 50% liability which is not sustainable. Thus, the learned counsel for the appellant submitted that the appeals may be allowed.

7. The learned counsel appearing for the National Insurance Company submitted that at the time of accident the driver of auto drove the vehicle in a rash and negligent manner along with four passengers and hence, he is also equally responsible for the accident and that the Tribunal has rightly come to the conclusion and fixed the liability at 50% on the driver of the Auto and there is nothing wrong in the finding of the Tribunal to interfere into the Award. Thus, she for dismissal of these appeals.

8. I have heard the learned counsel appearing on either side and perused the materials on record.

9. On perusal of the records, it is seen that the auto driver drove the vehicle, which is a overloaded. So auto driver is also responsible for the above said accident. But, any-how the liability fixed by the



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Tribunal on the driver of the Auto is excessive. Hence, 25% of the liability is fixed against the driver of the Auto and 75% against the driver of the lorry. The award passed by the Tribunal is modified to that extent and the compensation amount awarded by the Tribunal are confirmed.

10. In the result, with the above modification in respect of the liability, these Civil Miscellaneous Appeals are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

14.09.2022

Index :Yes/No
Internet :Yes/No
trp

To

1. The Motor Accident Claims Tribunal
(III Additional Subordinate Judge), Thiruchirappalli.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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A.A. NAKKIRAN, J.,

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