



C.M.A(MD)Nos.434 and 435 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A(MD)Nos.434 and 435 of 2010

and

M.P(MD) Nos.1 and 1 of 2010

The Divisional Manager,
M/s. New India Assurance Company Limited,
242-B, Kamarajar Salai,
Madurai-9.

... Appellant
(in both appeal)

vs.

1.G.Balaji

... 1st respondent in
C.M.A(MD)No.434 of 2010

2.R.Deepak Selvakumar

... 1st respondent in
C.M.A(MD)No.435 of 2010

3.V.A.Sethumanickam

... 2nd Respondent
(in both appeals)

(2nd respondent was set ex parte before the
learned Tribunal and his appearance may be
dispensed with)

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section
173 of the Motor Vehicles Act, 1988, to set aside or modify the judgment
and decree in M.C.O.P.Nos.138 and 139 of 2005, dated 16.12.2009 on
the file of the Motor Accident Claims Tribunal, IV Additional



C.M.A(MD)Nos.434 and 435 of 2010

Subordinate Court, Madurai.

WEB COPY

For Appellant : Mr.J.S.Murali
For R1 & R2 : No appearance
For R3 : Ex-parte
(in both appeals)

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellant/insurance company against the common award, dated 16.12.2009, made in M.C.O.P.Nos.138 and 139 of 2003 on the file of the Motor Accident Claims Tribunal, IV Additional Subordinate Court, Madurai.

2. The case of the claimants, in nutshell, is as follows:

On 05.09.2002, at about 17.00 hours, the claimant Balaji drove the TVS-Moped bearing Reg.No.TN-58-E-9644 from Thirupparankundram to Thirunagar east to west keeping extreme left side of the Madurai Thirumangalam main road. In the said vehicle, the claimant Deepak Selvakumar was travelled as pillion rider. When they were nearing Thirunagar Third Bus stop, a lorry bearing registration No.TN-60-



C.M.A(MD)Nos.434 and 435 of 2010

A-8883 belonging to the second respondent came from west to east in a rash and negligent manner and dashed against the TVS-Moped. In the impact, the claimants were fell down and sustained multiple grievous injuries. Alleging that the accident had happened due to the rash and negligent driving of the driver of the second respondent's lorry, the claimants filed claim petitions claiming compensation of Rs.1,50,000/- and Rs.3,50,000/- respectively.

3.The owner of the lorry remained absent before the Tribunal and therefore, he was set *exparte*. The appellant/Insurance Company contested the claim petitions on all the grounds available to them.

4.Before the Tribunal, on the side of the claimants, six witnesses were examined as P.W.1 to P.W.6 and ninety documents were marked as Exs.P.1 to P.19. On the side of the Insurance Company, one witness was examined as R.W.1 and no document was marked.

5. The Tribunal, on appreciation of evidence adduced by the claimants, found that the driver of the lorry caused the accident and awarded compensation of Rs.56,540/- to the claimant Balaji and Rs.71,500/- to the claimant Deepak Selvakumar with interest at the rate



C.M.A(MD)Nos.434 and 435 of 2010

of 7.5% per annum. Aggrieved over the same, the present appeals have been filed.

6. The learned counsel appearing for the appellant/insurance company contended that on 05.09.2002, the first respondent/first claimant along with two others, at the time of accident, rode the TVS Moped in a rash and negligent manner on the wrong side of the road and dashed against the second respondent lorry. He further submitted that at the time of accident, they did not wear helmet and the first claimant, who rode the bike, has no valid driving license, hence, the first claimant Balaji is also contributed negligence for the accident, but the tribunal had erroneously fastened the liability on the appellant alone.

7. There is no appearance on behalf of the respondents 1 and 2/claimants and the third respondent remained *ex parte* before the Tribunal.

8. On going through the materials available on records, this Court finds that the first respondent/first claimant along with two others travelled in a two-wheeler, which is against the Rule. Further, the claimants have no valid driving license. However, the Tribunal, without



C.M.A(MD)Nos.434 and 435 of 2010

considering the said fact, fastened the entire liability on the Insurance Company. Hence, this Court is of the view that the first respondent/first claimant has also contributed for the cause of the accident and this Court is fixed the negligence at the ratio of 25:75 in favour of the claimants and the driver of the lorry. The Tribunal, on appreciation of the evidence awarded a sum of Rs.56,540/- and Rs.71,500/- as compensation to the claimants. This Court is of the considered opinion that it is just and reasonable compensation and thus, the award of the Tribunal needs no interference.

9.In the result, these Civil Miscellaneous Appeals are partly allowed to the extent indicated above. It is represented that the appellant/ insurance company has already deposited the entire award amount before the Tribunal. Hence, the Tribunal is directed to refund 25% of the award amount with proportionate interests to the appellant/insurance company, on necessary application. The respondents/claimants are permitted to withdraw 75% of the award amount with proportionate interests and costs, less the amount already withdrawn if any. No costs. Consequently, connected miscellaneous petitions are closed.



C.M.A(MD)Nos.434 and 435 of 2010

14.09.2022

WEB COPY

Index :Yes/No

Internet :Yes/No

To

- 1.The Motor Accident Claims Tribunal,
IV Additional Subordinate Court, Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)Nos.434 and 435 of 2010

A.A.NAKKIRAN,J.

cp

COMMON JUDGMENT MADE IN
C.M.A(MD)Nos.434 and 435 of 2010

14.09.2022