



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.04.2022**

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)Nos.1442 of 2016 and 238 of 2017
and
C.M.P.Nos.11980 of 2016 and 2682 of 2017

The Branch Manager,
National Insurance Company Limited,
92, Devarpuram Road,
Near Court Buildings,
Tuticorin.

... Appellant/3rd respondent in Both C.M.As

.vs.

1.Selvi
2.Pappa
3.Seethalakshmi
4.Velu

... 1 to 4th Respondents/Petitioners
in C.M.A(MD).No.1442 of 2016

5.Sankar Guru

... 5th Respondent/ 1st Respondent
in C.M.A(MD).No.1442 of 2016

6.Aruna Fish Trading Company
184 D/6, Therespuram
Tuticorin District.

...6th Respondent/2nd Respondent
in C.M.A(MD).No.1442 of 2016

7.The Branch Manager,
United India Insurance Company Limited,
84/28, First Floor,
North Car Street,
Ambasamuthiram,
Tirunelveli District.

... 7th Respondent/4th Respondent
in C.M.A(MD).No.1442 of 2016

1.Ramar

...1st Respondent/Petitioner
in C.M.A(MD).No.238 of 2017

2.Sankar Guru

...2nd Respondent/1st Respondent
in C.M.A(MD).No.238 of 2017



3. Proprietor of
M/s. Aruna Fish Trading Company,
184 D/6, Therespuram,
Tuticorin District. ... 3rd Respondent/2nd Respondent
in C.M.A(MD).No.238 of 2017

4. Selvi.
5. Pappa
6. Seethalakshmi
7. Velu

8. The Branch Manager,
United India Insurance Company Limited,
84/28, First Floor,
North Car Street,
Ambasamuthiram,
Tirunelveli District.
... .. 4 to 8 Respondents/4 to 8 Respondents
in C.M.A(MD).No.238 of 2017

COMMON PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying this Court to set aside the judgment made in M.C.O.P.Nos.80 and 125 of 2011 dated 11.12.2015, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Tenkasi District.

In C.M.A(MD).No.1442 of 2016:-

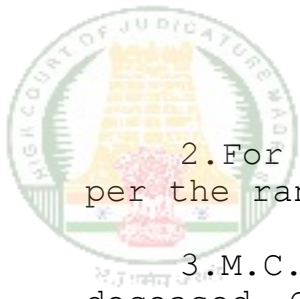
For Appellant	: Mr.A.Ilango
For Respondents	: Mr.R.J.Karthick for R1 to R4 No appearance for R5 R6-Dispense with order dated 10.12.2021 Mr.G.Prabhu Rajadurai for R7

In C.M.A(MD).No.238 of 2017:-

For Appellant	: Mr.A.Ilango
For Respondents	: No appearance for R1 to R7 Mr.D.Balamurugapandi for R8

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed by the National Insurance Company Limited, challenging the Judgment and decree passed in MCOP.Nos.80 and 125 of 2011, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Tenkasi District.



2. For the sake of convenience, the parties are referred to as per the ranking in the tribunal.

3. M.C.O.P.No.80 of 2011 is filed by the legal heirs of the deceased Chelladurai, who died in the accident taken place on 16.09.2021 and M.C.O.P.No.125 of 2021 is filed by the injured person, namely, Ramar.

4. Before the Tribunal, the Insurance Company has taken the specific plea that the claim petitioners have not projected the case properly and FIR was registered in Crime No.1267/2010 under Section 279, 338, 304(A) IPC and the same was closed as mistake of fact. He further submitted that at the time of accident, the driver of the two wheeler does not possess valid licence.

5. On the date of accident, the deceased and the petitioner in M.C.O.P.No.125 of 2011 travelled in the TVS Star City motorcycle bearing Registration No.TN-76-F-6168 as a rider and the pillion rider. The deceased Chelladurai had driven the vehicle with care and control and observing the traffic rules from East to West in Tenkasi to Shencottah Main Road in front of TDTA Education organization at Illangi. At that time, one Tata SFC 407 Van bearing Registration No.TN-69-AA-1242, which was driven by the first respondent in M.C.O.P.No.125 of 2011 with great terrific speed and not observing the traffic rules from West to East in the opposite direction and directly hit with the Motorcycle, as a result of which, the deceased Chelladurai had sustained severe serious injuries and died on the spot and the petitioner in M.C.O.P.No.125 of 2011 had sustained severe injuries all over the body. According to the claimants, the accident was occurred only due to the rash and negligent driving of the driver of the said Van. The first respondent in M.C.O.P(MD). No.125 of 2011 is the driver of the said van and the second respondent in M.C.O.P.No.125 of 2011 is the owner of the said van. The said van was insured with the National Insurance Company Limited, who is the third respondent in M.C.O.P.No.125 of 2011. It is the case of the claimants, that since the deceased died in the accident caused by the van bearing Registration No.TN-69-AA-1242, the third respondent in M.C.O.P.No.125 of 2011 is jointly and severally liable to pay the compensation.

6. To prove the case, on the side of the claimants, two witnesses were examined as P.Ws.1 to 3 and as many as 16 documents were marked. On the side of the respondents, one witness was examined and two documents were marked.

7. The Tribunal after considering the materials available on record, has held that the accident had taken place due to the rash and negligent driving of the driver of the van and therefore, directed the third respondent/Insurance Company in M.C.O.P.No.125 of 2021 to pay the compensation to the claimants. Challenging the



same, the Insurance Company has filed the present Appeals before this Court.

8. Heard both sides and perused the materials available on records.

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9. From the evidence of P.W.2, who is the injured/claimant in M.C.O.P.No.125 of 2011, I find that while he travelled as a pillion rider in the two wheeler bearing Registration No.TN-76-F-6168, which was driven by one Chelladurai, he died. The first respondent in M.C.O.P.No.125 of 2011 had driven the van bearing Registration No.TN-69-AA-1242 in a rash and negligent manner and dashed against the two wheeler and caused the accident.

10. Ex.P.1/FIR clearly collaborated with the evidence of P.W.2. In view of the positive evidence of P.W.2 and in the absence of contra evidence, I find that due to the rash and negligent driving of the first respondent in M.C.O.P.No.125 of 2011 and the van insured with the third respondent in M.C.O.P.No.125 of 2011, the third respondent in M.C.O.P.No.125 of 2011 is liable to pay the compensation and it does not warrant any interference.

11. On the point of negligence, the Insurance Company has relied upon the two decisions reported in 2013 (1) TNMAC page 60 and 2014(1) TNMCA Page 295. The relevant paragraphs are extracted as follows:-

CONTRIBUTOR NEGLIGENCE

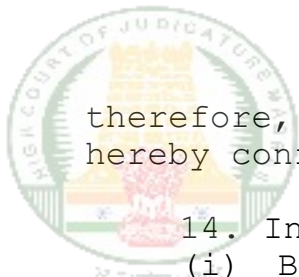
'driving licence by victim-cannot be construed to be ct of contributory negligence-Contributory Negligence cannot be assumed or presumed-Must be established by postive and relevent evidence''

'''FIR filed by R.W.1 though reffered to as Mistake of Fact by police, conclusion of Police cannot be substituted for that of tribunal.'''

12. The driver of the two wheeler, namely, the deceased does not possess valid licence at the time of accident and it cannot be presumed or not assumed. The learned counsel appearing for the appellant - Insurance Company has made a claim that on the date of the accident, the driver of the two wheeler, namely, the deceased does not have a valid licence . However, no such plea has been raised before the Tribunal. Therefore, the point which has not been raised in the counter statement, in the absence of any evidence to that effect, cannot be gone into at this juncture. In view of the above, the plea raised by the appellant stands negatived.

13. Quantum of compensation: The Tribunal has considered various aspects and awarded a just and reasonable compensation and

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therefore, the quantum of compensation awarded by the Tribunal is hereby confirmed.

14. In the result,

(i) Both the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(ii) The award passed by the Tribunal is upheld.

(iii) The present appellant - National Insurance Company is directed to deposit the entire compensation awarded by the Tribunal i.e., Rs.8,97,000/- in M.C.O.P.No.80 of 2021 and Rs.2,74,000/- in M.C.O.P.No.125 of 2011 (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.Nos.80 and 125 of 2011, on the file of the Motor Accidents Claims Tribunal and Principal Subordinate Judge, Tenkasi, within a period of twelve weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the present appellant, the claimants in both M.C.O.Ps are permitted to withdraw the entire amount after following the due process of law.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

To

The Principal Subordinate Judge/
Motor Accidents Claims Tribunal,
Tenkasi.

COPY TO:-

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



+2 CC to M/s.A.ILANGO, Advocate (SR-16250 & 16251[F]
dated 04/04/2022)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-16367[F]
dated 04/04/2022)

+1cc to M/s.D. BALA MURUGAPANDI, Advocate, SR.No.16566
DATED:05.04.2022

JUDGMENT MADE IN
C.M.A(MD)Nos.1442 of 2016 and 238 of 2017
01.04.2022

SP (CO)
GC (07.06.2022) 6P 8C