



C.M.A.No.3193 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 12.12.2022	Pronounced on 27.01.2023
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No. 3193 of 2017 and C.M.P.No. 16666 of 2018

The Oriental Insurance Company Ltd
having Office at 1st Floor, Gopal Rao Library Building
Town Hall Road, Kumbakonam – 612 001

.. Appellant

Versus

1.Sellammal
2.Kokila
3.Minor Boopathi
4.Minor Nandakumar
5.Chinnammal
6.Meenakshisundaram

7.Sundaralakshmi Fuel Service Ltd
SFMP/106/3, Sithar Kovil Main Road
Sivathapuram Post, Salem – 636 307

8.Royal Sundaram Alliance Insurance
Company Limited having office at
9/111, Mangalam Building, 4 Roads
Salem – 636 009

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 22.09.2016 made in MCOP.No.1315 of 2013 on the file of the Motor Accident Claims Tribunal (Special District Court) Salem.



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For Appellant : Mr.R.Vinod
for M/s.Elveera Ravindran

For Respondents : Mr.Ma.Pa.Thangavel for R1 to R5
R6 – NDW
R7- No appearance
Mr.G.Vasudevan for R8

JUDGMENT

The respondents 1 to 5 are the claim petitioners, before the Tribunal and the owner of the Maruthi Car is the sixth respondent and its Insurance Company is the appellant herein; the respondents 7 and 8 are the owner of the Scorpio car and its Insurance Company respectively.

2. The Insurance Company has preferred this appeal on the point of negligence and extent of liability. The factum of the accident and the quantum are not in dispute.

3. The respondents 1 to 5 / claim petitioners filed M.C.O.P.No.1315 of 2013 before the MCAT, Salem claiming pecuniary compensation on the death of the husband of the first respondent herein namely Mr.Thangadurai.

4. PW2 namely Mr.Selvam is examined as occurrence witness and the



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driver of the Maruthi Car is examined as RW4, while the driver of the Scorpio Car is insured with the Royal Insurance Company has been examined as RW2.

Ex.P3 is the rough sketch.

5. Ex.R1 is the Insurance Policy of the TN.38.AV.4170; Ex.R2 is the final report filed by the Police; Ex.R3 is the MVI Report of TN.30.K.2525 and Ex.R4 is the driving license. Computation of compensation is not in dispute. Hence, the quantum of compensation of Rs. 10,20,000/- awarded by the Tribunal is hereby confirmed.

7. On the point of manner of the accident and fixing of contributory negligence of 50% each on the driver of the Scorpio Van and Maruthi Car (the insurer of the Maruthi Car/Oriental Insurance Company) has preferred this appeal.

8. Heard the respective counsel and perused the materials placed on record.

9. The learned counsel for the Appellant Insurance Company would contend that the oral evidence of RW4, the driver of the Maruthi Car having



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registration number in TN.38.AV.4170, that his vehicle did not not make any impact and he is not responsible for the death of the deceased, ought to have been accepted and the accident has taken place due to the negligence on the part of the driver of the Scorpio Car, who hit the Maruthi Car from behind. Thereby, the Maruthi Car has moved forward due to the impact and drove over the person who had fallen on the road.

10. My attention was drawn to the evidence of the PW2, the occurrence witness.

11. The learned counsel for the respondents 7 and 8 would contend that the Tribunal has rightly appreciated the manner of the accident and fixed the contributory negligence at 50% each.

12. Now, the point that arises for consideration in this appeal is whether the driver of the Maruthi Car and the driver of the Scorpio Car are at composite negligence at the rate of 50% or not?

13. From Ex.P1-FIR and the evidence of PW2, Occurrence Witness, it is



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seen that the deceased Mr.Thangadurai after completing his job was returning to his home in his two wheeler on 02.06.2011 at about 08.00 PM near Vinayaga Mission Medical College, at that time, one vehicle from the behind came and dashed the deceased and fled away. As a result, he fell down and on seeing the person on the road, the driver of the Maruthi Car, (the sixth respondent herein) has applied the break and stopped the vehicle few steps before the person who was lying on the road (subsequently died). At that time, the Scorpio Vehicle having registration number in TN.30.K.2525 owned by the seventh respondent insured with the eighth respondent herein came and dashed from the behind of the Maruthi Car. Due to the impact of the dashing of the Scorpio Car from the behind, the Maruthi Vehicle moved forward and ran over the Thangadurai who was on the road. It is also the evidence of RW2, the driver of the Scorpio Car that his vehicle was dashed by another vehicle, who had also fled away. Thus, this Court finds that there is involvement of four vehicles in the accident.

14. One four wheeler kicked, the two wheeler rode by the Mr.Thangadurai, as a result, he fell down on the road and sustained minor injury and the driver of the Maruthi car, who came from behind has applied the



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break and stopped the vehicle few steps away from the person (deceased).

Since, the Scorpio Vehicle dashed the Maruthi Car from behind, the Maruti Vehicle ran over the person laying on the road, consequently, resulted in the death of the deceased.

15. Since all the vehicles are plying on the Highway, they should have been more diligent and cautious in driving their vehicles, by keeping safe distance from each other.

16. The Trial Court, on consideration of the answers elicited in the cross examination of the RW2 (the driver of the Scorpio Car) and RW4 (the driver of the Maruthi Car) has rightly pointed out that the drivers should have been more diligent while driving in the highway that too near Town Junction and hence rightly come to the conclusion that due to the composite negligence on the part of the RW2 and RW4 (Driver of Scorpio Car and Maruthi Car respectively), the accident has taken place. Accordingly, fixed 50% contributory negligence each on the drivers. Such analysis by the Tribunal cannot be found fault with.

17. Besides Ex.R3-Rough sketch also supports the findings of the Trial



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Court. Hence, this Court finds that on a comprehensive of reading of cross examination of PW2 and the evidences of RW2 (Mr.Senthil Kumar, the driver of the Scorpio Car) and RW4 (Mr.Madasamy, the driver of the Maruthi Car), the Trial Court has rightly come to the conclusion that both the vehicle drivers are at fault at the rate of 50% each and the same does not warrant any interference at this appeal stage, as the same does not suffer from any irregularities or illegalities.

18. Accordingly, the findings rendered by the Tribunal is hereby confirmed and this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.01.2023

Internet : Yes/No
Speaking Order/Non-Speaking Order
dhk

RMT.TEEKAA RAMAN.J,

dhk

To

7/8



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1. The Presiding Officer
Motor Accident Claims Tribunal
(Special District Court)
Salem.

2. Royal Sundaram Alliance Insurance
Company Limited
No.9/111, Mangalam Building, 4 Roads
Salem – 636 009

**Pre-delivery Judgment made in
C.M.A.No.3193 of 2017**

27.01.2023