



C.M.A.(MD).No.1559 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1559 of 2013

and

M.P(MD) No.1 of 2013

The New India Assurance Company Limited,
Munnar
Kerala State.

... Appellant/2nd Respondent

-vs-

1. M.Mayakannan @ Kannan

... 1st Respondent / Petitioner

2. T.Dennison

... 2nd Respondent/
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award made in M.C.O.P.No.200 of 2012, dated 10.04.2013, on the file of the Motor Accidents Claims Tribunal/ I Additional District Judge, Thoothukudi.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.S.Sivathilagar for R1
: No appearance – for R2



C.M.A.(MD).No.1559 of 2013

WEB COPY

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal/I Additional District Judge, Thoothukudi, made in M.C.O.P.No.200 of 2012 primarily on the ground of negligence.

2. The injured claimant had contended that when he was a pillion rider in a two wheeler which was driven by one Balasubramanian, the Ambassador Car belonging to the first respondent insured with the second respondent came from the opposite direction and dashed against the two wheeler, in which, the rider has passed away and the legal heirs have filed M.C.O.P.No. 58 of 2012 and the injured pillion rider has filed M.C.O.P.No.200 of 2012.

3. The Tribunal arrived at a finding that the driver of the car was solely responsible for the accident. The Tribunal has awarded a sum of Rs.2,70,427/- (Rupees Two Lakhs Seventy Thousand Four Hundred and Twenty Seven only) as compensation for the injured claimant. Challenging the same, the present appeal has been filed by the Insurance Company.



C.M.A.(MD).No.1559 of 2013

WEB COPY

4. The primary contention of the learned counsel for the appellant is that when there was negligence on the part of the rider of the two wheeler as well as the driver of the Car, the liability should have been properly apportioned and therefore, the award of the Tribunal is not sustainable mulcting the entire liability upon the Insurance Company of the Car.

5. It is brought to the notice of this Court that challenging the award passed in M.C.O.P.No.58 of 2012, the Insurance Company had filed C.M.A. (MD) No.1578 of 2013 raising the same ground of negligence. In paragraph No.3 of the order, dated 12.12.2017, this Court was pleased to apportion the negligence at 80% on the driver of the Car and 20% on the rider of the two wheeler. Therefore, this Court is not in a position to reconsider the said issue relating to negligence.

6. A perusal of the quantum of award clearly indicates that more than 50% of the award is towards medical expenses and therefore, this Court does not find any reason to interfere with the quantum of award.



C.M.A.(MD).No.1559 of 2013

WEB COPY

7. In view of the order passed by this Court in C.M.A(MD) No.1578 of 2013, dated 12.12.2017, the appellant herein has to satisfy the entire award and the appellant would be entitled to recover the 20% of the award amount from the owner of the two wheeler, in view of the judgment of the Hon'ble Supreme Court reported in **2015 9 SCC 273 (Khenyei vs- New India Assurance Company Limited and others).**

8. In view of the above said deliberations, the award of the Tribunal is hereby modified to the effect that the appellant has to satisfy the award in entirety and thereafter, recover 20% of the award amount from the owner of the two wheeler. In other respects, the award of the Tribunal is confirmed.

9. Accordingly, this Civil Miscellaneous Appeal stands disposed of in the above said terms. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

15.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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C.M.A.(MD).No.1559 of 2013

To

1. The Motor Accidents Claims Tribunal/
I Additional District Judge, Thoothukudi.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).No.1559 of 2013

R.VIJAYAKUMAR,J.

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C.M.A.(MD)No.1559 of 2013

15.06.2023