



C.M.A.(MD).No.225 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISHKUMAR

C.M.A.(MD).No.225 of 2023

and

C.M.P.(MD).No.2530 of 2023

The Branch Manager,
M/s. United India Insurance Company Limited,
Micro Office,
No.36A/17, T.S.T.Complex,
Poovalur Road,
Lalgudi,
Trichy District.

... Appellant

Vs.

1.Aricjua Ezhil
2.Minor Plasi Praba (3 months old)
3.Benjamin
4.Alagesan

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment / order dated 08.07.2022 in M.C.O.P.No.48 of 2015 on the file of the Special District Court, Thiruchirapalli (Motor Accident Claims Tribunal).



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For Appellant : Mr.C.Karthik
For R1 to R3 : M/s.R.Karthika
for Right Law Associates

JUDGMENT

Challenging the award passed by the Motor Accident Claims Tribunal, Special District Court, Thiruchirapalli in M.C.O.P.No.48 of 2015, dated 08.07.2022, the present appeal has been filed by the Insurance Company.

2. The brief facts leading to the filing of this appeal are as follows:

On 25.05.2014 at about 9.30 p.m., while the deceased Prabaharan, aged about 26 years was riding his motorcycle bearing Registration No.TN 61 E 2336 from Chembiyakudi to Vilagam along with his wife, the rider of the motorcycle bearing Registration No.TN 46 F 1551 came in a rash and negligent manner in an opposite direction and dashed against the vehicle of the deceased. As a result, the deceased succumbed to injuries. At the time of death, he was working as Conductor in V.R.R. Private Bus. The first petitioner is the wife, the second petitioner is the daughter and the third petitioner is the father of the deceased and they



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claimed compensation before the Tribunal. The Insurance Company took a stand that there was a negligence on the part of the deceased and disputed the liability.

3. Before the Tribunal, on the side of the petitioners, P.Ws.1 to 3 were examined and Exs.P1 to P13 were marked and on the side of the respondents, R.Ws.1 and 2 were examined and Exs.R1 and R2 were marked.

4. The Tribunal, considering the evidence of P.W.2 and the F.I.R. filed against the rider of the offending vehicle, has fixed the negligence on the part of the rider of the first respondent vehicle and awarded a sum of Rs.16,55,200/- as compensation. Challenging the same, the Insurance Company has filed the present appeal.

5. The only contention raised by the learned counsel for the appellant is that the evidence of P.W.2, the wife of the deceased itself clearly indicate that the deceased drove the vehicle in a wrong side, as a



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result, the accident had took place. Her evidence also clearly stated that the deceased went to the extreme right side of the road, which has been substantiated in the rough sketch. Hence, some amount of contributory negligence has to be fixed on the deceased. Besides, the deceased also not wore helmet at the relevant point of time.

6. The learned counsel appearing for the respondents 1 to 3 would submit that the evidence of P.Ws.1 and 2, eyewitnesses clearly show that the rider of the first respondent drove the motorcycle in a rash and negligent manner from North to South and caused the accident. Therefore, the Tribunal has rightly fixed the contributory negligence on the part of the rider of the first respondent.

7. In the light of the above submissions, now the point arise for consideration in this appeal is whether the deceased is also negligent in riding the motorcycle, which resulted in accident and if so, what is the contributory negligence to be fixed. The quantum of compensation has not been disputed by the Insurance Company. It is not in dispute that the



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vehicle of the fourth respondent also insured with the insurance company at the relevant point of time. The accident took place on 25.05.2014. The deceased was proceeding from South to North in a particular road where the accident took place. It is also admitted that the offending vehicle is also came from North to South. Though the F.I.R. has been registered against the rider of the offending vehicle, on perusal of the evidence of P.W.2, who was seated as pillion rider at the relevant point of time. Her evidence makes it very clear that the accident took place on the eastern side of the road, while the deceased was proceeding from South to North. This fact clearly shows that the deceased was in wrong side and this has been substantiated by Ex.R2 / rough sketch, wherein, the scene of occurrence has been shown on the extreme right side of the road. This fact clearly show that there is some negligence on the part of the deceased while riding the vehicle. That apart, he has also not wore the helmet at the relevant point of time. Therefore, considering this fact, this Court, in the interest of justice, fixed 15% of the contributory negligence on the part of the deceased. The quantum of compensation arrived by the Tribunal is not disputed. After deducting 15% from the award amount,



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the total compensation comes to Rs.14,06,920/- (Rs.16,55,200/- - 15% = Rs.14,06,920/-).

8. In the result, the Civil Miscellaneous Appeal is allowed and the appellant/Insurance Company is directed to deposit the entire award amount within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the first claimant is entitled to Rs. 8,00,000/-, the second claimant is entitled to Rs.4,00,000/- and the third claimant is entitled to the remaining amount. The award amount of the minor/second claimant to be deposited in anyone of the Nationalised Bank till she attain majority. No costs. Consequently, the connected Miscellaneous Petition is closed.

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NCC:Yes/No

Index:Yes/No

Speaking/Non-speaking order

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To

The Special District Court,
Thiruchirapalli (Motor Accident Claims Tribunal).



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N.SATHISHKUMAR, J.

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