



C.M.A.(MD).No.417 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.417 of 2023

and

C.M.P.(MD).No.5080 of 2023

The Oriental Insurance Company Limited,
No.4 Iind Floor,
Bharathidasan Salai,
Cantonment,
Trichirapalli.

... Appellant

-Vs-

1.R.Malliga
2.Nishanth
3.Minor Narmatha
4.Chellammal
5.South India Corporation Private Limited,
No.603, Rani Seethai Hall,
6th Floor, Anna Salai,
Chennai 600 006.
(5th respondent remained exparte
before the lower Court)

... Respondents



C.M.A.(MD).No.417 of 2023

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PRAYER: The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No. 56 of 2019, dated 09.06.2020, on the file of the Motor Accident Claims Tribunal, Sub Judge, Thuraiyur.

For Appellant : Mr.C.Jawahar Ravindran

For R1 to R4 : Mr.N.Sudhagar Nagaraj

J U D G M E N T

Challenging the award passed by the Motor Accident Claims Tribunal, Sub Judge, Thuraiyur in M.C.O.P.No.56 of 2019, dated 09.06.2020, the Insurance Company has filed the present appeal.

2. The Tribunal has passed the following award:

S. No	Description	Amount awarded by the Tribunal
1.	Loss of income	Rs.21,93,750/-
2.	Loss of Consortium	Rs.20,000/-
3.	For pain and suffering	Rs.20,000/-
4.	For funeral expenses	Rs.15,000/-
5.	For transportation	Rs.15,000/-
	Total	Rs.22,63,750/-



C.M.A.(MD).No.417 of 2023

WEB COPY

3. The deceased was a driver by profession and on 18.12.2018, at about 15 hours, while the deceased Ramesh driving the lorry bearing Registration No.TN -28-BA-2899 along with one Venkatesh in order to load goods at Sivakasi, proceeding on Madurai to Kanyakumari Main Road from North to South, a lorry bearing Registration No.TN-49-BA-2683 proceeding on the above said road before the lorry, without any signal, suddenly applied the break. Hence, the lorry in which the deceased travelling hit the offending vehicle from the behind. As a result, the driver of the lorry bearing Registration No.TN -28-BA-2899 succumbed to injuries. At the time of accident, the deceased was aged about 50 years and he was earning a sum of Rs.15,000/- per month. The legal heirs of the deceased claimed the compensation before the Tribunal. The second respondent/Insurance Company has filed a counter stating that only the deceased drove the vehicle in a rash and negligent manner and without maintaining reasonable distance in a Highway and hit against the lorry and disputed the liability.



C.M.A.(MD).No.417 of 2023

WEB COPY

4. Before the Tribunal, on the side of the petitioners, P.Ws.1 and 2 were examined and Exs.P1 to P9 were marked and on the side of the respondents, R.W. 1 was examined and Exs.R1 to R3 were marked.

5. The Tribunal after analysing the evidence found that the driver of the offending vehicle suddenly stopped the lorry, which resulted in accident. Based on the above facts, the Tribunal has awarded a sum of Rs.22,63,750/- as compensation. Challenging the same, the present appeal has been filed.

6. The learned counsel appearing for the appellant would submit that P.W.2 was acting driver in the vehicle of the deceased. The First Information Report clearly indicate that the offending vehicle was proceeding in a slow manner and hence, the accident was occurred, that itself clearly indicate that the deceased was not maintaining a reasonable distance from the offending vehicle. Therefore, there was a negligence on the part of the deceased also. According to him, at least 25% of negligence has to be deducted.



C.M.A.(MD).No.417 of 2023

WEB COPY

7. The learned counsel appearing for the respondents would submit that the evidence of P.W.2 clearly indicate that the driver of the offending vehicle has applied the break suddenly without any signal, which resulted in accident and the appellant has not produced any documentary evidence to prove the contributory negligence. Therefore, he prayed for dismissal of this appeal.

8. In the light of the above submissions, now the point for consideration in this appeal is whether the Tribunal is right in fixing the liability and whether the award passed by the Tribunal is valid. As the liability alone is questioning in this appeal, quantum of compensation is not disputed by the Insurance Company. Now, this Court is inclined to go into the liability aspect only. Admittedly, the accident took place in a Highway and the offending vehicle was proceeding in front of the deceased vehicle. It is the case of P.W.2 at the first instance while lodging the F.I.R. that the offending vehicle was proceeding in a slow manner in the Highway, which resulted in the accident. It is not the case of P.W.2 at the first instance that the offending vehicle applied the break suddenly. Therefore, the deceased vehicle was coming from the behind of the offending vehicle, whereas,



C.M.A.(MD).No.417 of 2023

WEB COPY

in his evidence, P.W.2 has taken a different stand as if the offending vehicle suddenly applied the break and therefore, the deceased could not control his vehicle in a Highway and hit the offending vehicle from the behind. Even the two statements of P.W.2 appears to be true.

9. It is relevant to note that when the deceased driving the lorry in a Highway, on noticing that the offending vehicle is proceeding in a slow manner in front of the lorry, a reasonable distance ought to have maintained and at least minimum 20 meters distance ought to have been maintained. If the deceased has maintained a reasonable distance, he could have avoided the accident. So, in order to avoid any accident, the heavy vehicle ought to have maintained some reasonable distance.

10. In such a view of the matter, it cannot be said that the entire negligence is on the part of the driver of the offending vehicle and there is a negligence on the part of the deceased also. Though this Court is of the view that the negligence is more than 40% on the deceased, the learned counsel for the Insurance Company submitted that 50% of negligence has to be fixed on the deceased. This



C.M.A.(MD).No.417 of 2023

WEB COPY

Court is of the view that it is reasonable to fix 25% of negligence on the part of the deceased driver. Accordingly, 25% of award amount has to be deducted from the total award amount passed by the Tribunal.

11. In the result, the Civil Miscellaneous Appeal is partly allowed. The appellant/Insurance Company is directed to deposit 75% of the award amount within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the same as apportioned by the Tribunal. No costs. Consequently, the connected Miscellaneous Petition is closed.

24.04.2023

akv

To

The Motor Accident Claims Tribunal,
Sub Judge,
Thuraiyur.



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C.M.A.(MD).No.417 of 2023

N.SATHISH KUMAR, J.

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C.M.A.(MD).No.417 of 2023

24.04.2023