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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.03.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.1202 of 2022

and

C.M.P(MD)No.12237 of 2022

Sakthivel

:Appellant/Third respondent

.vs.

Soundararajan(died)

1.Rajeswari

2.Shanmugapriyan

3.Sivamanikandan

4.Kaliammal

:Respondents 1 to 4/Claimants

5.Arulraja

6.The Divisional Manager,

United India Insurance Company Limited,

7A, West Veli Street,

Opposite to Railway Station,

Madurai.

:Respondents 5 and 6/Respondents
1 and 2

(Since the fifth respondent is set ex-parte before the trial Court,
notice to the fifth respondent may be dispensed with)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act against the judgement and award made in
M.C.O.P.No.28 of 2016, dated 26.09.2018, on the file of the Motor



Accidents Claims Tribunal(Additional District Court), Paramakudi.

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For Appellant	:Mr.J.Anandkumar
For Respondents 1 to 4	:Mr.D.Senthil
For Respondent-5	:Mr.K.Kumaravel
For Respondent-6	:Mr.N.Dilip Kumar

JUDGMENT

Challenging the finding of the Tribunal fixing 70% negligence on the rider of the motor-cycle owned by the appellant, the present Civil Miscellaneous Appeal came to be filed.

2.On 31.7.2012 at about 5.00 p.m., the two wheeler bearing Registration No. TN 65 Z 9457 rode by its rider from Sayalkudi to Kadaladi and the deceased one Umayya Vignesh is the pillion rider. At that time, another two wheeler bearing Registration No.TN 65 Z 8366 came in the opposite direction in a rash and negligent manner and dashed against the appellant's two wheeler and as a result, the appellant's motor cycle rider succumbed to injuries and rider of the another vehicle bearing Registration No. TN 65 Z 8366 also succumbed to injuries in the same accident and a crime has been registered in Crime No.122/2012 against the rider of the two wheeler bearing Registration No. TN 65 Z 9457. Hence the



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compensation has been claimed for the death of the pillion rider who travelled in the motor cycle bearing Registration NO. TN 65 Z 0457 by the parents and sippings.

3.The second respondent, who is the owner of the two wheeler bearing Registration No. TN 65 Z 8366 filed a counter affidavit denying the rash and negligent driving of his motor cycle. The appellant remained exparte before the Tribunal and not filed any counter.

4.Before the Tribunal P.W.1 was examined and Ex.P1 to Ex.P11 were marked. On the side of the respondents, R.W.1 and R.W.2 were marked and Ex.R1 and Ex.R2 were marked.

5.Considering the oral and documentary evidence, the Tribunal has come to the conclusion that the rider of the appellant motor cycle was negligent in driving his motor cycle and thus caused the accident. The Tribunal mainly relied upon the evidence of P.W.1, R.W.1 and R.W.2. R.W.1 is the pillion rider of the vehicle bearing Registration No. TN 65 Z 8366. R.W.2 is the Investigation Officer. Taking note of the fact that the accident took place on the middle of the road and rider of the appellant motor cycle rode the



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vehicle in a rash and negligent manner and fixed the negligence on appellant's vehicle and directed the appellant to pay 75% of the amount awarded. The Tribunal taking note of the age of the deceased, awarded a sum of Rs.8,11,000/- as compensation, in which, 75% of the amount is directed to be paid by the appellant. Challenging the same, the present appeal came to be filed.

6.The main contention of the appellant before this Court is that there are two different versions in which one witness depose to the effect that the vehicle fell on the western portion of the road and another witness depose to the effect that the vehicle fell on the eastern side of the road. The same clearly indicate that there cannot be exact evidence to prove the negligence, particularly, head on collision. Therefore his contention is that the Tribunal fixing the negligence at 75% on the appellant is not proper and the same may be reduced.

7.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8.The Tribunal,after considering the evidence of P.W.1 and R.W.1 and 2 has come to the conclusion that the accident is purely



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due to the rash and negligent driving of the driver of the motor cycle owned by the appellant. It is relevant to note that R.W.1 is the pillion rider in the vehicle bearing Registration No. TN 65 Z 8366 and that vehicle rider is also succumbed to injuries. The accident took place in the main road, head on collision and the appellant has not even filed any counter denying the stand of the Petitioner nor taken any steps to examine the rider of his motor cycle to prove his stand. When the appellant had sufficient opportunity to disprove certain facts which has already been proved by the other side, the appellant without doing so, merely on the basis of the oral submission cannot deny the finding rendered by the Tribunal. In the absence of any evidence adduced on the side of the appellant, the Tribunal has considered the evidence, particularly the evidence of the Investigation Officer and an eye witness, who was the rider in other vehicle, has rightly come to the conclusion that only the rider of the appellant motor cycle was negligent in driving his motor cycle. It is also relevant to note that there is no insurance to the appellant's vehicle, besides, licence of the rider has also not been established. In the given situation, the Tribunal has shown some indulgence and fixed the liability at 75%, without fixing the entire negligence on the appellant's driver. For all these reasons, this Court finds no merit in the appeal and same deserves



dismissal.

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9. Accordingly, the Civil Miscellaneous Appeal is dismissed, confirming the award of the Tribunal. No costs. Consequently, connected Miscellaneous Petition is dismissed.

30.03.2023

Index: Yes/No
Internet: Yes/No
NCC: Yes/No
vsn

To

1. The Motor Accidents Claims Tribunal,
(Additional District Court),
Paramakudi.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR.,J.

vsn

JUDGMENT MADE IN
C.M.A(MD)No.1202 of 2022
and
C.M.P(MD)No.12237 of 2022

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