



C.M.A.(MD)No.1035 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.1035 of 2022

and

C.M.P.(MD)No.10260 of 2022

The Oriental Insurance Company Limited,
Through its Branch Manager,
Thilai Nagar, Lakshmi Complex,
No.73-B-1, Salai Road,
Trichy Town, Trichy District.

...Appellant/2nd Respondent

Vs.

1.Mani
2.Thirumamani
3.Rajathi
4.Rajeshwari
5.Chittu
6.Selvam
7.Vimalan

...Respondents/Petitioners
...Respondent/Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 11.04.2022 made in M.C.O.P.No.253 of 2019 on the file of the learned Additional District and Sessions Court, Sivagangai.



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For Appellant : Mr.A.Ilango

For Respondents : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the quantum of compensation awarded by the Tribunal and the negligence fixed on the part of the lorry driver.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i)While the deceased was riding his two wheeler proceeding from Thiruppathur to Pudukottai main road at Chillampatti vilakku, the driver of the Torres Lorry bearing Registration No.TN-65-AK-0052, which was proceeding in front of the two wheeler of the deceased, applied sudden break without any signal, due to which the deceased



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dashed against the lorry. As a result, the deceased succumbed to injuries.

The first and second petitioners are the parents of the deceased. The third to fifth petitioners are the sisters and sixth petitioner is the brother of the deceased. At the time of accident, the the deceased was 22 years old and earning a sum of Rs.25,000/- per month by working as load man in H.P.Gas company. Hence, the claim petition was filed.

(ii)The second respondent before the Tribunal took a stand that the driver of the Lorry had parked the Lorry in the left side of the road adhering to traffic rules. At that time, the deceased drove his motorcycle in a rash and negligent manner and dashed against the back side of the lorry. The accident was occurred only due to the rash and negligent driving of the deceased. Further, the deceased had not worn helmet and had not valid license at the time of accident.

4. Before the Tribunal, on the side of the claimant P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P21 were marked. On the side of the respondent no oral and documentary evidence had been marked.



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5.The tribunal on appreciation of entire evidence available on record had fixed the liability on the driver of the lorry and awarded the following compensation:

S.No.	Description	Amount
1.	Loss of Dependency	Rs.18,14,400/-
2.	Loss of Estate	Rs. 16,500/-
3.	Loss of Filial Consortium (2*44,000)	Rs. 88,000/-
4.	Funeral Expenses	Rs. 16,500/-
	Total	Rs.19,35,400/-

Challenging the same, the present Civil Miscellaneous Appeal has been filed by the Insurance Company.

6.I have heard the learned counsel appearing on either side and also perused the materials available on record.

7.The learned counsel for the appellant would submit that the trial Court has not even considered the nature of accident. The deceased was coming behind the lorry in a high speed and he only dashed against



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the lorry. That itself clearly shows that the deceased was only rash and negligent in driving. Further, the deceased had not worn helmet and he had not valid license at the time of accident. Hence, contributory negligence has to be fixed on the deceased.

8.The learned counsel for the respondent would submit that the accident was occurred due to the negligent driving of the lorry and the trial Court had analyzed the entire materials available on record and arrived the compensation.

9.In view of the above submission, now the point arises for consideration in this appeal is:

(1) Whether the Tribunal is right in fixing the entire negligence on the part of the lorry driver?

10.It is relevant to note that the deceased had rode the motorcycle and hit against the lorry, which was proceeded in front of the motorcycle. The occurrence took place in the highway. Though the Insurance Company had taken a stand that the lorry was parked in the left



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side of the road and the deceased only dashed against the parked lorry, no one had been examined on the side of the Insurance Company to substantiate the same.

11.The stand of the claimants is that the lorry was proceeded in front of the motorcycle and at the time, the lorry driver had suddenly applied break. Therefore, the deceased hit the lorry from the behind. P.W.2 was also examined in this regard.

12.It is relevant to note that when the person is riding a two wheeler, that too in the highway, particularly when the heavy vehicles are proceeding in front of the two wheeler, he ought have maintained reasonable distance. If the deceased had maintained such reasonable distance, even if the lorry driver applied sudden break, the two wheeler of the deceased would not have hit the lorry. Whereas, the dashing of two wheeler against the lorry and the nature of damages to the vehicles clearly indicate that the two wheeler was ridden in a high speed and very close to the lorry proceeding ahead of the two wheeler without maintaining any distance.



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13.In this regard, the learned counsel for the appellant had relied upon the judgment of the Hon'ble Supreme Court in the case of ***Nishan Singh and others vs. Oriental Insurance Company Ltd., and others [2018 (1) TN MAC 745 (SC)]***, in which it has been held that the car following Truck, expected to maintain a safe distance of atleast 2-3 seconds gap in ideal conditions to avert collision and to allow following driver to respond as per Regulation 23 of the Rules of Road Regulations, 1989 and liability had to be fixed on the car, which hit the Truck. Further in the case of ***Bajaj Allianz General Insurance Company Ltd., vs. Amutha Devi and others [2020 (1) TN MAC 169 (DB)]***, this Court had fixed 40% contributory negligence on the part of the motorcycle.

14.It is also relevant to note that there is no evidence available on record to show that the deceased had valid driving license and worn helmet at the relevant point of time. Such view of the matter, this Court is of the view that the entire negligence fixed by the Tribunal on the part of the lorry driver is not proper and certainly there must be some negligence to be fixed on the part of the deceased.



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15.Considering the reasons stated above, this Court fixes 30% contributory negligence on the part of the deceased for driving the motorcycle very close to the lorry proceeding ahead of the motorcycle. The other heads awarded by the Tribunal remains unaltered.

16.In fine, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal is reduced to Rs.13,54,780/- (Rs.19,35,400-Rs.5,80,620(30%)) (Rupees Thirteen Lakhs Fifty Four Thousand Seven Hundred and Eighty only)

17.The appellant/Insurance Company is directed to deposit the compensation amount as modified by this Court i.e.,Rs.13,54,780/- (Rupees Thirteen Lakhs Fifty Four Thousand Seven Hundred and Eighty only) with interest at the rate of 7.5% per annum from the date of petition till the date of realization to the credit of M.C.O.P.No.253 of 2019, on the file of the Motor Accident Claims Tribunal /Additional District and Sessions Court, Sivagangai within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already



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deposited. On such deposit, the first and second claimants are entitled to withdraw a sum of Rs.5,77,390/- each (Rupees Five Lakhs Seventy Seven Thousand Three Hundred and Ninety only), the third to sixth claimants are entitled to withdraw a sum of Rs.50,000/- each (Rupees Fifty Thousand only), less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

30.03.2023

NCC : Yes/Nos
Index : Yes/No
Internet : Yes/No
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To

- 1.The Motor Accident Claims Tribunal/
Additional District and Sessions Court, Sivagangai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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