



C.M.A.(MD)No.603 of 2017

WEB COP BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 13.02.2023

Delivered On : 24.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.603 of 2017

The Royal Sundaram Alliance General,
Insurance Co. Ltd.,
Rep. By its Branch Manager,
5th Floor, ATP Towers,
No.12-A Bye Pass Road,
Madurai Town, Madurai Distirct.

.. Appellant/Respondent No.2

Vs.

1.Panjavarnam
2.T.Duraipandi
3.T.Jeya
4.A.Maheswari

.. Respondents/Petitioners
.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 28.12.2016 made in M.C.O.P.No.98 of 2016 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Sivagangai.

For Appellant	:	Mr.S.Srinivasa Raghavan
For Respondents 1 to 3	:	Mr.N.Madhava Govindan
For 4 th Respondent	:	No Appearance



C.M.A.(MD)No.603 of 2017

WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.98 of 2016 dated 28.12.2016, on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Sivagangai.

2.The appellant herein is the second respondent, the respondents 1 to 3 herein are the petitioners and the 4th respondent herein is the first respondent in the claim petition. The respondents 1 to 3 herein have filed a claim petition in M.C.O.P.No.98 of 2016, claiming compensation for the death of one Manikavasakan, in an accident that took place on 19.06.2013. The Tribunal has awarded a sum of Rs.13,61,000/- (Rupees Thirteen Lakhs and Sixty One Thousand only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.98 of 2016 is as follows:

On 19.06.2013 at about 01.00 p.m., when the deceased was riding his two wheeler along the left side of the Madurai-Ramanathapuram National Highways Road, a TATA Ace vehicle bearing registration No.TN-58-U-6384 came from the opposite direction in a rash and negligent manner and dashed against the motorcycle. The deceased sustained injuries and he was taken to Manamadurai Government Hospital and after taking first aid, he was taken to Madurai Meenakshi Mission Hospital and he died on the same date. The deceased was working as the



C.M.A.(MD)No.603 of 2017

WEB COPY

Supervisor in Sri Vallalar Brick Chamber and he was earning Rs.12,000/- (Rupees Twelve Thousand only) per month and then he was doing agricultural work in his own land and was earning Rs.15,000/- (Rupees Fifteen Thousand only) per month. The petitioners are the dependants of the deceased and they claim a sum of Rs. 30,00,000/- (Rupees Thirty Lakhs only) as compensation.

4. Brief substance of the counter filed by the second respondent therein is as follows:

The manner of the accident, age, profession, monthly income of the deceased are to be proved. The accident did not happen due to the rash and negligent driving of the first respondent's driver. It was the deceased who rode the two wheeler without observing the road rules. The claim is excessive.

5. The first respondent was remained set exparte. On the side of the claimants, 2 witnesses were examined and 15 documents were marked. On the side of the respondents therein, one witness was examined and two documents were marked. After trial, the Tribunal has awarded a sum of Rs.13,61,000/- (Rupees Thirteen Lakhs and Sixty One Thousand only) as compensation to be paid by the second respondent therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal on the following grounds:

The finding of the Tribunal relating to negligence on the part of the driver of



C.M.A.(MD)No.603 of 2017

WEB COPY

the first respondent is incorrect. The Tribunal has to appreciate the contra evidence and the document Ex.R1. The Tribunal failed to consider that the deceased contributed to the accident due to his own negligence. Ex.R1 rough sketch clearly reveals that the deceased had gone to the wrong side and dashed against the TATA Ace vehicle. The place of the accident noted in the rough sketch and criminal Court records clearly reveals that it was the rider of the two wheeler who has gone to extreme right side of the road and dashed against the respondent vehicle. The Tribunal has dismissed the petition as against the first respondent. There is no necessity for the second respondent to indemnify the first respondent.

6.On the side of the appellant, it is stated that P.W.2 was examined as an eye witness and he has deposed that it was the deceased who went to the wrong side and dashed against TATA Ace vehicle. The deposition is as follows:

□மணிவாசகம் தான் தவறான திசையில் சென்று டாட்டா ஏஸ் வண்டியில்
மோதிவிட்டார் என்றால் சரி□

7.On the side of the appellant, it is stated that in the rough sketch, Ex.R1, it was mentioned that the accident has occurred on right side of the road and that R.W.1 has deposed that in Observation Mahazer and rough sketch, it was mentioned that the accident has happened on the eastern side of the road and that the deceased had ridden the vehicle from south to north and the left side of the deceased ought to



C.M.A.(MD)No.603 of 2017

WEB COPY

have been on the western side of the road but the accident has happened on the eastern side of the road and that it was the deceased who was negligent in riding the two wheeler.

8.In the chief examination of P.W.2, it was stated that it was the driver of the first respondent who was rash and negligent but in the cross examination of P.W.2, it is stated that the vehicle of the deceased went to the wrong side of the road. In the evidence of P.W.1 and in Ex.R1, and Ex.R2, it is mentioned that the accident has happened on the eastern side of the road I.e. right side of the deceased. The copy of FIR is Ex.P1, Ex.P4 and Ex.P5 are the MVI reports, Ex.P6 and Ex.R1 are the rough sketch and Ex.P7 is the copy of the chargesheet. The accident was a head on collision. From the evidence of P.W.2 and R.W.1 and from Ex.P1, Ex.P6, Ex.P7, Ex.R1 and Ex.R2, it is decided that both the drivers of the vehicles were responsible for the accident. Hence, it is decided that the deceased has also contributed to the accident and the negligence is fixed as 30% on the deceased and 70% on the driver of the TATA Ace vehicle.

9.There is no grounds of appeal regarding the quantum. There is no cross objection on the side of the respondent. In the above circumstances, it is decided that the quantum fixed by the Tribunal is reasonable.

10.After deducting 30% towards his own negligence, the claimants are entitled



C.M.A.(MD)No.603 of 2017

to 70% of the compensation. The Tribunal has fixed the quantum as 13,61,000/- (Rupees Thirteen Lakhs and Sixty One Thousand only). After deducting 30% towards the own negligence of the deceased, the claimants are entitled to (*)Rs. **9,52,700/- (Rupees Nine lakhs and Fifty Two Thousand and Seven Hundred only)** as compensation.

11.In the result, this Civil Miscellenaous Appeal is **partly allowed**. The claimants are entitled to a compensation of (*)Rs.**9,52,700/- (Rupees Nine lakhs and Fifty Two Thousand and Seven Hundred only)** with interest and costs. The appellant herein is directed to deposit (*)Rs.**9,52,700/- (Rupees Nine lakhs and Fifty Two Thousand and Seven Hundred only)** with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order.

12.The 1st respondent herein is entitled to a share of Rs.5,52,700/- (Rupees Five Lakhs Fifty Two Thousand and Seven Hundred only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of deposit and with costs.

13.The respondents 2 and 3 herein are entitled to a share of Rs.2,00,000/- (Rupees Two Lakhs only) each as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of deposit.



C.M.A.(MD)No.603 of 2017

WEB COPY

14. On such deposit, the respondents herein are permitted to withdraw their respective shares with proportionate interest after deducting any amount received by them earlier. The claimants are not entitled for interest for the default period, if there is any.

Sd/-

Assistant Registrar(AS)

(*)Corrected as per the order of this court dated
12.09.2024 made in CMA(MD).603 of 2017.

Sd/-

Assistant Registrar(CO)

// True Copy //

/10/2024

Sub Assistant Registrar()

MRN

To

To be substituted to the order which is already despatched on 05.06.2024

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,Sivagangai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,Madurai.

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-17472[F] dated
24/03/2023)



C.M.A.(MD)No.603 of 2017

+1 CC to M/s.N.MADHAVAGOVINDAN, Advocate (SR-17167[F] dated 24/03/2023)

C.M.A.(MD)No.603 of 2017
24.03.2023

MGJ(01.06.2023) 8P 6C

MK/07.10.2024 8P/6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023