



C.M.A. (MD)No.1146 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.1146 of 2022

and

C.M.P.(MD)No.11754 of 2022

Bajaj Allianz General Insurance Company Limited.,
Represented through its Branch Manager,
GE Piazza, Air Port Road,
Yerwada, Pune-411 006.

...Appellant/3rd Respondent

Vs.

1.K.Jeyaram
2.J.Alagumayil
3.S.Kalimuthu
4.S.Ramkumar

...Respondents1 & 2/Petitioners

...Respondents3 & 4/Respondents 1 & 2

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 01.02.2022 passed in M.C.O.P.No.102 of 2014 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Sivakasi.

For Appellant	: Mr.V.Sakthivel
For R1 & R2	: Mr.M.Ashok Kumar
For R4	: No Appearance
For R3	: Unclaimed



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JUDGMENT

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Challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal/Subordinate Court, Sivakasi in M.C.O.P.No.102 of 2014, dated 01.02.2022 the present Civil Miscellaneous Appeal has been filed.

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

3.The brief facts, leading to the filing of the claim petition, are as follows:-

(i)On 24.02.2009 at about 10.30 p.m., the deceased was riding his two wheeler proceeding from South to North in Tiruthangal to Virudhunagar Road with his friend as pillion rider. The first respondent parked the lorry bearing Registration No.TN-28-AA-2005 without any indication of parking signal. As a result, the two wheeler hit the lorry from the behind and the deceased succumbed to injuries.

(ii)the deceased was aged about 24 years at the time of the accident and he was earning a sum of Rs.10,000/- per month as a Lorry Booking Agent. The



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petitioners are the parents of the deceased. Hence, the claim petition was filed seeking compensation.

(iii) the first and second respondents filed counter stating that the accident was occurred due to the rash and negligent driving of the deceased. The first respondent parked the lorry adhering to traffic rules with proper signal.

(iv) the third respondent also took a stand that only the deceased drove his motorcycle in a rash and negligent manner and hit against the lorry which was parked on the left side of the road with proper signal.

3.Before the tribunal, on the side of the claimants P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P11 were marked. On the side of the respondents R.W.1 to R.W.3 were examined and Ex.R1 was marked.

4.The tribunal after considering the entire oral and documentary evidence on record came to the conclusion that the lorry was parked in the left side of the road by the Sales Tax Officials with proper signal. Further, considering the evidence of R.W.1 to R.W.3, the Tribunal had found that the rider of the



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motorcycle drove the vehicle in a rash and negligent manner and dashed against the lorry from the behind. The deceased did not have any valid license and did not wear helmet at the time of the accident and awarded the compensation as follows:

S.No.	Head	Amount
1.	Loss of dependency	Rs.15,12,000/-
2.	Loss of estate	Rs. 16,500/-
3.	Funeral Expenses	Rs. 16,500/-
4.	Loss of love and affection	Rs. 80,000/-
5.	Transportation expenses	Rs. 10,000/-
	Total	Rs.16,35,000/-

The total compensation amount is Rs.16,35,000/-. The tribunal had fixed 70% contributory negligence on the part of the deceased and 30% negligence on the part of the first respondent considering the entire evidence on record and awarded a sum of Rs.6,54,000/- to the claimants as compensation. Challenging the same, the present Civil Miscellaneous Appeal had been filed by the Insurance Company.

5.The learned counsel for the appellant contended that even 30% of contributory negligence ought not to have been apportioned on the Insurance



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company by the Tribunal. The lorry was parked only by the Sales Tax Officials with proper signals.

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

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

Whether the tribunal was right in fixing 30% negligence on the part of the Insurance Company?

8.On perusal of entire evidence available on record, this Court is of the view that the Tribunal had infact rightly assessed the contributory negligence on the part of the driver of the lorry. The driver of the lorry or the cleaner ought to have put some blockades or signals to avoid any other vehicle coming near to the lorry. But the same had not been done. Therefore, this Court is of the view that the apportionment of Tribunal by fixing 30% contributory negligence on the part of the first respondent cannot be found fault. It is to be noted that the negligence apportioned on the part of the deceased had not been challenged by the claimants.



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9. In such view of the matter, I do not find any merits in this appeal.

Accordingly, this Civil Miscellaneous Appeal is dismissed.

10. At this juncture, the learned counsel for the appellant Insurance Company submitted that the entire award amount had been deposited. The claimants are permitted to withdraw the award amount, less the amount if any already withdrawn, as apportioned by the Tribunal by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

06.04.2023

NCC : Yes / No

Index : Yes/No

Internet : Yes/No

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To

1. The Motor Accident Claims Tribunal
Special Sub Court, Sivakasi.

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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