



C.M.A.No.1405 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2024

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.1405 of 2022

and

C.M.P.No.10305 of 2022

M/s.National Insurance Co. Ltd.,
Motor Third Party Claims Office,
No.46, Regina Mansion, Moore Street,
Chennai-600 001. ... Appellant /4th respondent

Vs.

1.Hepziba Vasanthi
2.Minor.Bery Jedida
3.Minor.Sardius Jewitha
4.Inbam Annapackiam ... Respondents 1 to 4 / Petitioners
(Respondent 2 and 3 are minors
represented by their mother
1st respondent/Hepziba Vasanthi)

5.M/s.Flycon Cargo Carriers
No.126/251, Angappan Naicken Street,
Chennai-600 001. ... 5th Respondent / 1st Respondent

6.L & T General Insurance Co. Ltd.,
III Party Claims Office,
No.180, Kodambakkam High Road,
Nunbgambakkam,
Chennai-600 034. ... 6th Respondent / 2nd Respondent

7.MVR Shipping Services Pvt. Ltd.,



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No.3, Ground Floor,
Jaffer Syrang Street,
Chennai-600 01.

... 7th Respondent / 3rd Respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.09.2021 made in M.C.O.P.No.7161 of 2016 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant	: Mr.S.Arun Kumar
For Respondents 1 to 4	: Mr.K.Varadha Kamaraj
For Respondents 5 and 7	: No Appearance
For 6 th Respondent	: Ms.Poomalai

JUDGMENT

(The Judgment of the Court was made by Mrs.R.Kalaimathi, J.,)

The Insurance Company against whom liability is fastened at 60% of the total compensation has preferred this Civil Miscellaneous Appeal against the Award dated 28.09.2021 made in M.C.O.P.No.7161 of 2016 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, for a change.

2. The facts led to the filing of claim petition is set out hereunder in brief:

On 12.06.2016 at about 8.40 am., while the deceased was riding his motor cycle bearing Reg.No.TN-20-AU-7951 along Ennore Express road



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proceeding from north to south at Kannikoil Street Junction, Tiruvottriyur, a container lorry bearing Reg.No.TN-03-D-9434 came in a rash and negligent manner and hit on the motor cycle from behind and the deceased fell down from the motor cycle and by that time, another container lorry bearing Reg.No.TN-04-AQ-3105 driven by its driver in a rash and negligent manner and the deceased was ran over by the front wheel of the container lorry (Reg.No.TN-04-AQ-3105). Due to the said impact, the deceased sustained serious injuries and succumbed to the said injuries. Therefore, due to rash and negligent driving of the drivers of both container lorries, the accident occurred and henceforth the drivers of both container lorries are responsible for the accident.

3. The 1st respondent is the owner of the container lorry bearing Reg.No.TN-03-D-9434 and its insurer / 2nd respondent – L&T General Insurance Co.Ltd., and the 3rd respondent is the owner of the another container lorry bearing Reg.No.TN-04-AQ-3105 and its insurer/4th respondent-National Insurance Company Ltd., are jointly and severally liable to pay compensation to the claimants herein.

4. On behalf of the 1st respondent (Owner of the container lorry), it



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was contended that the driver of the 1st respondent lorry was following the queue on the left side of the road slowly in order to enter into the Harbour for loading the goods. The driver of the other container lorry bearing Reg.No.TN-04-AQ-3105 drove the vehicle in a rash and negligent manner by overtaking all the standing vehicles in order to enter into the Harbour quickly and in that process, the deceased was ran over by the said 3rd respondent's lorry and therefore, the driver of the 1st respondent lorry (Reg.No.TN-03-D-9434) is not responsible for the accident.

5. It was contended by the 2nd respondent Insurance Company that the driver of the lorry bearing Reg.No.TN-03-D-9434 was not holding valid driving licence at the time of accident and sought for dismissal as against the 2nd respondent/Insurance Company. The claimants are put to strict proof of avocation and income of the deceased.

6. Heard Mr.S.Arun Kumar, learned counsel appearing for the appellant / National Insurance Company and Mr.K.Varadha Kamaraj learned counsel appearing for the respondents 1 to 4 / claimants and Ms.Poomalai, learned counsel appearing for the 6th respondent / L & T General Insurance Co. Ltd.



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7. At trial, three witnesses were examined on the claimants' side, and 36 documents were marked. On the side of the 1st respondent, one witness was examined (RW1) and two documents were marked.

8. Based on the evidence of ocular witnesses namely PW2/Sadasivam and RW1/Mahesh Babu driver of the lorry bearing Reg.No.TN-03-D-9434, the Tribunal concluded that due to the rash and negligent driving of both the drivers of the container lorries, the accident occurred and fixed the liability at 40% and 60% upon the 2nd and 4th respondents/Insurance Companies respectively. Aggrieved against the said apportionment, the 4th respondent/National Insurance Company is on an appeal.

9. It is the evidence of PW2 Sadasivam that the lorry bearing Reg.No.TN-03-D-9434 hit the motor cycle which was ridden by the deceased, due to which he fell down on the eastern side and the other container lorry which was also entering into the Harbour in a hurried way came in the eastern side and the deceased was ran over by the container lorry bearing Reg.No.TN-04-AQ-3105. The lorry driver of the 1st respondent's vehicle (Reg.No.TN-03-D-9434) Mahesh Babu who was



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examined as RW1 would state that he was driving his lorry by following the queue and the other container lorry bearing Reg.No.TN-04-AQ-3105 came in a rash and negligent manner and hit on the motor cycle and due to the said impact, the deceased fell down and the deceased was ran over by the wheel of the said vehicle. Ex.P1 is the copy of the F.I.R. It is a well known fact that contents of the F.I.R., can be used for the purpose of corroboration and for contradictions. It is not a substantial piece of evidence. From the above said oral and documentary evidence (PW2, RW1 and Ex.P1), it transpires that due to the negligent driving of the driver of both the container lorries, the accident had happened. Upon consideration of the above said details of evidence, we are of the considered view that the negligence is apportioned 50% upon the each of the container lorry drivers.

10. Based on the aforesaid discussions and observations, this Civil Miscellaneous Appeal stands allowed by fixing negligence from 60% to 50% upon the appellant/National Insurance Company Ltd.

11. In the result,

(i) The Civil Miscellaneous Appeal stands Partly Allowed.



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(iii) The Appellant / National Insurance Company is directed to deposit 50% of the compensation amount awarded by the Tribunal i.e., **Rs.42,38,050/-** (less the amount already deposited if any) and the 6th respondent / L&T General Insurance Co. Ltd., is directed to deposit the remaining 50% of the compensation amount awarded by the Tribunal i.e., **Rs.42,38,050/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation to the credit of M.C.O.P.No.7161 of 2016 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the Claimants are permitted to withdraw the same along with interest and costs (less the amount if any already withdrawn), as per the apportionment made by the Tribunal, by making necessary cheque application before the Tribunal. The compensation amount awarded to the minor petitioners/claimants 2 and 3 have to be deposited in a Nationalised Bank till they attain majority. The



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1st petitioner/wife of the deceased is permitted to receive the interest once in three months for the welfare of the minor children. No costs. Consequently, connected civil miscellaneous petition is closed.

(J.N.B. J.,) (R.K.M.J.,)
26.09.2024

Index: Yes/No
Speaking Order/Non Speaking order
Neutral Citation Case:Yes / No
ssn

J.NISHA BANU, J.,
and
R.KALAIMATHI.J.,

ssn

To

1. The Motor Accidents Claims Tribunal,
II Court of Small Causes, Chennai.
2. The Section Officer,
V.R Section,
High Court, Madras.

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