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CMA.No.2052 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2052 of 2024

1. Radha

2. Alagesan

3. Lakshmi

4. Vijayakumar

5. Sakthi

... Appellants

VS.

1. K.Subramani

2. United India Insurance Company Limited,
No.1, TKM Complex, Katpadi Road,
Vellore.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 28.11.2023 in M.C.O.P.No.428 of 2019 on the file of the III Additional District and Sessions Judge, Vellore at Tirupattur.

For Appellants	:	Mr.PA.Sudesh Kumar
R1	:	Notice dispensed with
For R2	:	Mr.P.Sankaranarayanan



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J U D G M E N T

The appellants are the claimants in M.C.O.P.No.428 of 2019 on the file of the III Additional District and Sessions Judge, Vellore at Tirupattur. They filed the said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.40,00,000/- for the death of one Kanthakumar, (the son of the claimants 1 and 2 and brother of the claimants 3 to 5) in a road accident that took place on 06.09.2019.

2.The brief case of the appellants / claimants is as follows :

On 06.09.2019 Kanthakumar (deceased) was riding his two wheeler bearing Registration Number TN-83-V-5054 on Krishnagiri - Hosur Road. When he was nearing a place called 'Melumai' a lorry bearing Registration Number TN-28-L-7768 going ahead of him suddenly stopped on the middle of the road as the driver applied brakes. Resultantly, Kanthakumar hit the lorry from behind and died on spot.

3. According to the claimants, the rash and negligent driving of the driver of the lorry was the cause of the accident and that since the owner of the lorry had insured his vehicle with the second respondent, the



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United India Insurance Company Limited, both of them are jointly and severally liable to pay compensation to them.

4. The first respondent remained absent and was set *ex parte* in the Tribunal. The second respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5.The Tribunal after analysing the evidence on record fixed the negligence on the part of the driver of the two wheeler (deceased) bearing Registration Number TN-83-V-5054 and the driver of the lorry bearing Registration Number TN-28-L-7768 in the ratio 20:80. Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6.Heard Mr.PA.Sudesh Kumar, learned counsel appearing for the appellants and Mr.P.Sankaranarayanan, learned counsel appearing for the second respondent.

7. It is seen from the records that the place of occurrence is a four lane highway. The rider of the two wheeler should have maintained a minimum distance from the lorry which was going ahead of him. According to the claimants, the driver of the lorry all of a sudden applied



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brake on the middle of the road, as a result of which, Kanthakumar had hit the lorry from behind and died on the spot. FIR (Ex.P1) was in fact lodged by the mother of the deceased against the driver of the lorry. In order to substantiate that the driver of the lorry was rash and negligent the claimants have examined an eyewitness to the occurrence as P.W.2. P.W.2 in his evidence had deposed that the driver of the lorry applied brakes unmindful of vehicular traffic. Considering the facts and circumstances, the ratio of negligence on the part of the rider of the two wheeler (deceased) and the driver of the lorry is fixed as 50:50.

8. In the result,

- i. the Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. the ratio of negligence on the part of the driver of the lorry and the rider of the two wheeler is fixed as 50:50.

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Index : Yes/No
Speaking/Non-speaking order
mtl



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To

1. The III Additional District and Sessions Judge,
Vellore at Tirupattur.
2. United India Insurance Company Limited,
No.1, TKM Complex, Katpadi Road,
Vellore.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

mtl

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