



C.M.A. Nos. 2148 and 2219 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. Nos. 2148 and 2219 of 2021
and C.M.P. Nos.12242 and 11874 of 2021

(a). C.M.A. No.2148 of 2021:

National Insurance Company Limited,
No.33, Promanade Road,
Trichirapalli.

... Appellant / 2nd Respondent

Vs.

1. Senthil ... Respondent/ Petitioner
2. Murugan ... Respondent/ 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 03.06.2020 passed in M.A.C.T.O.P. No.1 of 2019 on the file of the Additional District Sessions Judge, Motor Accident Claims Tribunal, Ariyalur.

For Appellant	:	M/s. N.B. Surekha
For R1	:	M/s. K. Gandhi kumar
For R2	:	No Appearance



C.M.A. Nos. 2148 and 2219 of 2021

(a). C.M.A. No.2219 of 2021:

National Insurance Company Limited,
No.33, Promanade Road,
Trichirapalli.

... Appellant / 2nd Respondent
Vs.

1. Senthil
 2. Rajeswari
 3. Muniappan
 4. Minor Iyappan ... Respondents/ Petitioners 1 to 4
-
2. Murugan ... Respondent/ 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 03.06.2020 passed in M.A.C.T.O.P. No.2 of 2019 on the file of the Additional District Sessions Judge, Motor Accident Claims Tribunal, Ariyalur.

For Appellant	:	M/s. N.B. Surekha
For R1	:	M/s. K. Gandhi kumar
For R2	:	No Appearance

JUDGMENT

These Civil Miscellaneous appeals have been filed by the claimants seeking enhancement of compensation awarded in M.A.C.T.O.P. Nos.1 and 2 of 2019, dated 03.06.2020 on the file of the Additional District Sessions



Judge, Motor Accident Claims Tribunal, Ariyalur.

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2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 17.09.2018, at about 10:30 AM, the claimant namely Senthil was riding a TVS XL two wheeler bearing Registration No.TN-31-P-5542 along with his wife Jothi from V.Kaikatti to Muttuvancherry road, while they reached near Birla Pillaiyar Kovil, a TATA Super Ace bearing Registration No.TN-45-BD-1273 in a rash and negligent manner in the opposite direction and dashed against the claimant's two wheeler, thereby causing grievous injuries to Senthil and fatal injuries to Jothi. A criminal case was registered in Cr.No.209/2018 U/s.279, 337 and 304(A) of IPC on the file of Vikkiramangalam Police Station. For the injuries sustained, the claimant has filed a claim petition in M.A.C.T.O.P. No.1 of 2019 seeking compensation for a sum of Rs.5,00,000/- and for the loss of deceased Jothi, the claimants, who are the legal heirs of the deceased has filed a claim petition in M.A.C.T.O.P. No.2 of 2019 seeking compensation for a sum of Rs.15,00,000/- under section 140 and 166 of the Motor Vehicles Act.



4. The first and second respondents are the owner and insure of the TATA Super Ace bearing Registration No.TN-45-BD-1273. The second respondent - insurance company has filed a joint counter and contended that the accident was taken place only due to the rash and negligence on the part of the rider of the TVS XL two wheeler, who drove the vehicle in zig zag manner and invited the accident. The insurance company also stated that the first respondent's driver has no valid badge to drive the TATA Super Ace vehicle and the rider of the two wheeler also has no valid driving licence, hence prays to dismiss the claim petitions.

5. Before the Tribunal both the claim petitions were taken jointly and common evidences were recorded: on the side of the claimants P.W.1 and P.W.2 were examined and Exs.P.1 to P.18 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Exs.R.1 to R.5 were marked.

6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the first respondent's driver is responsible for the accident. In point no.2, the Tribunal has quantified and granted



compensation for a sum of Rs.29,670/- and Rs.14,87,500/- along with interest @ 7.5% per annum in M.A.C.T.O.P. No.1 of 2019 and M.A.C.T.O.P. No.2 of 2019, respectively. The Tribunal fixed the liability on the part of the second respondent - insurance company to indemnify the first respondent and to pay compensation to the claimants.

7. Aggrieved over the award, the insurance company has filed these appeals challenging the liability to indemnify the first respondent and to pay compensation to the claimants.

8. The learned counsel for the insurance company has submitted that the Tribunal has not properly appreciated the evidence placed on record, which shows that the rider of the TVS XL two wheeler has no valid driving licence at the time of accident and both rider as well as deceased pillion rider have not wore head gear to protect themselves while travelling in a two wheeler. Even though, their contention was admitted by the claimants, the Tribunal has not fixed contributory negligence on the part of the rider as well as on the deceased pillion rider, hence prays to modify the award.



9. The learned counsel appearing for the claimants has submitted that the rider of the two wheeler has ridden the vehicle on the left hand side of the road, but the rash and negligence on the part of the driver of the TATA Ace vehicle, who came in the opposite direction, is the cause for the accident. Hence, the rider and the deceased have not contributed to the accident, even though, it is accepted that the rider of the two wheeler was not having a valid driving licence at the time of accident, the same alone is not sufficient to hold that he has contributed to the accident unless to show that he has ridden the vehicle in negligent manner, hence prays to confirm the award.

10. I have considered the submissions made on both sides and perused the materials available on record.

11. Before the Tribunal, in the cross examination, the P.W.1 - injurer herein has admitted that he drove the vehicle along with his wife Jothi without having a valid driving licence and he further stated that his two wheeler was not insured and they were not wearing Headgear to protect themselves during the time of accident. It is further elicited that he was a



Kalaichi by profession, used to carry vessels in his two wheeler and the road in which the accident took place was wide enough to accommodate two buses. Though, he has admitted that he has seen the on coming TATA Super Ace vehicle nearly 10 feet before him, he denied that he is responsible for the accident and his two wheeler was also seized by the police.

12. The combined reading of the evidence of P.W.1 and connected records shows that the P.W.1 - injured herein was riding his two wheeler along with his wife by carrying vessels without wearing helmet and without valid driving licence and insurance to his two wheeler at the time of accident. He has also admitted that he has seen the on coming TATA Super Ace vehicle before the impact. Ex.P.16 - Post mortem certificate of the deceased Jothi clearly shows that she has sustained grievous head injury during the accident, if she had wore an helmet, she might not have sustained head injury and lost her life. This Court judgment in ***C.M.A.(MD). No. 987 and 988 of 2014 dated 13.02.2017, Branch Manager (Oriental Insurance Company Limited) vs. Indirani and others*** has held in paragraph 11 and 12 as follows:



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“11. Without wearing a helmet, no rider can drive the two wheeler and as per Section 129 of the Motor Vehicles Act, 1988, it is mandatory. Section 129 of the Motor Vehicles Act, 1988, is usefully extracted hereunder:

"129. Wearing of protective headgear.- Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear [protective headgear conforming to the standards of Bureau of Indian Standards]:

Provide that the provisions of this section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban:

Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit.

Explantion.- "Protective headgear" means a helmet which,-

(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motor cycle a degree of protection from injury in the even of an accident; and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear."

12. This Court has elaborately dealt with the instances of wearing of helmet by quoting the details of death cases due to non-wearing of helmet in R. Mallika and others vs. A. Babu and others [C.M.A.No.3235 of 2014,decided on 08.06.2015] and therefore, 15% negligence has to be fixed on the rider of the two wheeler for not wearing the helmet and accordingly, 15% negligence is fixed on the rider of the two wheeler."



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13. This Court is of the view that the injured, the first respondent herein has not possessed a valid driving licence, insurance and was not wearing helmet at the time of accident, hence this Court is inclined to fix contributory negligence of 15% on the part of the rider as well as on the pillion rider and accordingly, the compensation awarded by the Tribunal is modified as follows:

(a). M.A.C.T.O.P. No.1 of 2019

Total Compensation Awarded	= Rs.29,670/-
Deduction for Contributory negligence @ 15%	= Rs. 4,450.50
Total Compensation	= Rs.25,219.50
	= Rs.25,220/- (round off)

(b). M.A.C.T.O.P. No.2 of 2019

Total Compensation Awarded	= Rs.14,87,500/-
Deduction for Contributory negligence @ 15%	= Rs. 2,23,125/-
Total Compensation	= Rs.12,64,375/-

14. In the result, these Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.29,670/- in



M.A.C.T.O.P. No.1 of 2019 is hereby reduced to **Rs.25,220/- [Rupees Twenty Five Thousand Two Hundred and Twenty only]** and the compensation awarded by the Tribunal at Rs.14,87,500/- in M.A.C.T.O.P. No.2 of 2019 is hereby reduced to **Rs.12,64,375/- [Rupees Twelve Lakh Sixty Four Thousand Three Hundred and Seventy Five only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of the compensation awarded by the Tribunal at Rs.29,670/- in M.A.C.T.O.P. Nos.1 and 2 of 2019 on the file of the Additional District Sessions Judge, Motor Accidents Claims Tribunal, Ariyalur. The second respondent - insurance company also given liberty to withdraw the excess amount deposited, if any. On such deposit, the claimants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving



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credit to the Savings Bank Account of the claimants. Consequently,
connected civil miscellaneous petitions stand closed. There shall be no order
as to costs in the present appeal.

19.01.2024

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Additional District Sessions Judge,
Motor Accident Claims Tribunal,
Ariyalur.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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