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CMA.No.2407 of 2023
and C.M.P.No.22609 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2407 of 2023

and

C.M.P.No.22609 of 2023

The National Insurance Company Limited,
Motor Third Party, T.P.Cell,
No.46, Moore Street, III Floor,
Chennai - 600 001.

... Appellant

VS.

1. S.Amutha

2.S.Maduri (Minor)

3.S.Yamini (Minor)

4.R.Elizabeth

5.M/s.R.V. Constructions,
No.14, Kulanthaialamm Nagar,
1st Street, 2nd Floor, Pudukottai Road,
Thanjavur - 613 005.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 04.07.2023 in M.C.O.P.No.2259 of 2018 on the file of the Motor



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Accidents Claims Tribunal (Special Sub Court No.I / Small Causes Court), Chennai.

For Appellant : Mr.D.Bhaskaran

For RR1 to 4 : Mr.K.Varadha Kamaraj

J U D G M E N T

The appellant, the National Insurance Company Limited is the second respondent in M.C.O.P.No.2259 of 2018 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.I / Small Causes Court), Chennai, and they have filed the present appeal questioning the quantum of compensation awarded by the Tribunal.

2. The respondents 1 to 4 / claimants filed the claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.2,00,00,000/- for the death of one Sureshkumar, (the husband of the first respondent, father of the respondents 2 and 3 and son of the fourth respondent) in a road accident that took place on 26.01.2018.

3. The brief case of the claimants is as follows :

On 26.01.2018 Suresh Kumar (deceased) was driving a



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Mahindra van bearing Registration Number TN-12-M-7520 on Chennai -
Trichy NH 45. Near Siruvachur, Perambalur District. A lorry bearing
Registration Number TN-49-BC-5734 belonging to the fifth respondent
and insured with the appellant was going ahead of the Mahindra van when
the driver of the lorry applied sudden brake causing collision.
Sureshkumar sustained injuries and died on the spot.

4. 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 appellant, the National
Insurance Company Limited, the owner and the insurer of the lorry are
jointly and severally liable to pay compensation.

5. The owner of the lorry, fifth respondent remained absent and
was set *ex parte* in the Tribunal. The appellant, the National Insurance
Company Limited, resisted the claim petition on all the grounds available
to the insurer under Section 170 of the Motor Vehicles Act.



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6.The Tribunal after analysing the evidence on record fixed the negligence on the part of the driver of the Mahindra van (deceased) and driver of the lorry in the ratio 20:80 respectively. Aggrieved over the same, the present appeal is filed.

7. Heard Mr.D.Bhaskaran, learned counsel appearing for the appellant and Mr.K.Varadha Kamaraj, learned counsel appearing for the respondents 1 to 4.

8. Mr.D.Bhaskaran, learned counsel appearing for the appellant contended that the driver of the Mahindra van was the wrong doer as far as the present case is concerned and FIR (Ex.P1) was also registered against him. The police after conducting investigation filed a referred charge sheet treating the case as abated since the driver of the Mahindra van had died. However, the Tribunal did not take these aspects into consideration and fixed the negligence on the part of the owner and insurer of the lorry as 80%. He therefore prayed for setting aside the Award passed by the Tribunal.



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9. Per contra Mr.K.Varadha Kamaraj, learned counsel appearing for the respondents 1 to 4 contended that the Tribunal had passed a well reasoned order and therefore, there is no reason for this Court to interfere with the same.

10. A perusal of the records shows that the lorry bearing Registration Number TN-49-BC-5734 was going ahead of the Mahindra van bearing Registration Number TN-12-M-7520. The accident spot is was on the NH 45 from Chennai - Trichy. According to the claimants, the driver of the lorry applied sudden brake, as a result of which, the Mahindra van rear ended the lorry.

11. Normally, maintenance of minimum distance between two vehicles is mandatory to prevent any mishap. In the instant case, the police had registered FIR (Ex.P1) only against the driver of the Mahindra van and also filed a referred charge sheet against him. It is true that the FIR (Ex.P1) and the final report cannot be a decisive factor to conclude that a particular driver of a vehicle was the wrong doer as far as the Motor



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Accidents Claims are concerned. A perusal of the FIR shows that one of the passengers of the Mahindra van had lodged a complaint with the police stating that the driver of the Mahindra van drove his vehicle in a rash and negligent manner. The claimants had examined the eyewitness to the occurrence, P.W.2. P.W.2 in his evidence had stated that the driver of the lorry was the tortfeasor. The person who lodged the FIR was not examined by both the parties. Looking at the circumstances of the accident it is clear that both the vehicles are more or less equally negligent. The conclusion of the Tribunal that the major liability was on the lorry which had applied brakes suddenly causing the van following it collide with its from behind. This is not acceptable. Such a minimum distance between both the vehicles could have averted the mishap. Therefore, this Court concludes that the liability ratio decided by the Tribunal is erroneous and needs a correction. Therefore, it is concluded that the ratio of liability of lorry and the van is 60:40.

12. In the result,

i. the Civil Miscellaneous Appeal is partly allowed. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.



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- ii. contributory negligence on the part of the driver of the lorry is fixed as 60% and driver of the Mahindra van (deceased) as 40%.

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

To

1. The Motor Accidents Claims Tribunal (Special Sub Court No.I / Small Causes Court), Chennai.
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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