



CMA.No.380 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2024

CORAM:

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

CMA.No.380 of 2024
& CMP.No.4215 of 2024

1. Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

2. Additional Director General of Police,
Venkateswara Hospital,
Pasumpon Muthuramalinga Thevar Road,
Rathna Nagar, Nandanam,
Chennai – 600 035.

3. The Deputy Director General of Police,
Armed Police head Quarters,
Near Police Quarters,
Lutheral Garden, Kilpauk,
Chennai – 600 010.

4. The Commandant,
Tamilnadu Special Force,
VBN, Battalion, Avadi,
Chennai – 600 109.

... Appellants

-Vs-



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1.Amsavalli
2.Selvakumar
3.Sivakumar
4.Thamizhselvi

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 25.04.2022 made in M.C.O.P.No.70/2020, on the file of Motor Accident Claims Tribunal/Additional District Court, Ariyalur.

For Appellants : Mr.C.Selvaraj, AGP

For R1 to R4 : Ms.K.Priya Varshini
for Mr.S.Kamadevan

JUDGMENT

Challenging the fixation of negligence and fastening the liability by the Tribunal in MCOP.No.70 of 2020, the appellants have filed the present appeal.

2.The case of the respondents/claimants is that on 03.02.2020 at 09.30 a.m when the deceased Manickam was riding a TVS Star XL heavy duty two wheeler bearing Registration No.TN 48 L 6624 from



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Keelapalur to Ariyalur main road, near Keelapalur VMT Petrol Bunk, the appellants jeep bearing Registration No.TN 12 G 0050 came from the opposite direction in a rash and negligent manner and went to the wrong side of the road and dashed against the deceased. Thereafter, the victim of the accident was taken to the hospital and was declared dead on 08.02.2020. Seeking a compensation of Rs.25,00,000/- for the death of the victim of the accident, his legal heirs filed MCOP.No.70 of 2020 before the Motor Accident Claims Tribunal, Additional District Judge, Ariyalur.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving on the part of the driver of the Jeep. The Tribunal however, fixed 10% contributory negligence against the victim of the accident for not possessing valid license at the time of the accident. Further, the Tribunal directed the appellants to pay a sum of **Rs.3,23,000/-** as compensation to the respondents.



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4.Challenging the fixation of 90% contributory negligence against the driver of the jeep and fastening the liability against the appellants, the appellants have come out with the present appeal.

5.The learned counsel for the appellant submitted that the accident occurred due to the negligence on the part of the rider of the two wheeler as well. Therefore, the Court below should have fixed the Contributory negligence in the ratio 50:50, ie., 50% against the driver of the jeep and 50% against the victim of the accident. However, the Tribunal fixed 90% contributory negligence against the driver of the jeep, which is unjustifiable. Thus, he would submit that the negligence fixed by the Tribunal has to be re-determined.

6.On the other hand, the learned counsel for the claimants/respondents would submit that the Tribunal had given a categorical finding that the accident occurred due to the rash and negligent driving on the part of the driver of the Jeep. That being the case,



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even fixing 10% contributory negligence against the rider of the two wheeler is not appropriate and the same is liable to be set aside. Further, he would also submit that the appellants have not produced any oral or documentary evidence to prove that the accident occurred due to the negligence on the part of the rider of the two wheeler. Therefore, he would submit that the Award of the of the Tribunal is just and fair and that the same may be confirmed.

7.Considered the submissions of the learned counsel for the appellants and the respondents and perused the materials placed on record.

8.In the present case, the challenge is only with regard to fixation of negligence by the Tribunal in the ratio 90: 10 ie., 90% against the driver of the Jeep and 10% against the rider of the two wheeler. However, on perusal of documents it is clear that the accident occurred due to the rash and negligent driving on the part of the driver of the Jeep bearing Regn.No.TN 12 G 0050. Further, the Tribunal has also given a



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categorical finding, based on oral and documentary evidence, that the accident occurred due to the negligence on the part of the driver of the Jeep. Under these circumstances, to contradict both the oral and documentary evidence, the appellants have not produced any documents. Further, they have not culled out anything by virtue of cross-examination from the claimants to establish that the accident occurred due to the rash and negligent driving on the part of the rider of the two wheeler. Therefore, this Court does not find any infirmity in the Award of the Tribunal and accordingly, the same is confirmed.

9.In the result, this Civil Miscellaneous Appeal is dismissed and the Appellants are directed to deposit the entire award amount of Rs.3,23,000/- as determined by the Tribunal, 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 **M.C.O.P.No.70 of 2020** on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Ariyalur. On such deposit being made, the Tribunal is directed to transfer the entire award amount to the



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Bank accounts of the respondents/Claimants through RTGS, in the same proportion as determined by the Tribunal, within a period of **three weeks thereafter**. No costs. Consequently, the connected miscellaneous petition is closed.

08.03.2024

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To

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



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KRISHNAN RAMASAMY, J.,

Tsg

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