



C.M.A.(MD) Nos.1029 & 1030 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) Nos.1029 & 1030 of 2011

and

M.P.Nos.1 & 1 of 2011

In C.M.A.(MD)No.1029 of 2011

The Branch Manager,
United India Insurance Company Ltd.,
S.N.Complex, Near Telephone Exchange,
L.P.Road, Adyar,
Chennai – 600 020.

... Appellant

Vs.

1.Veerachinnan,
2.Valliammal,
3.S.Sakthivel.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the common fair and executable order dated 29.07.2008 passed in M.A.C.O.P.No.166 of 2007 on the file of the Additional District and Sessions cum Fast Track Court of Dindigul.

For Appellant : Mr.N.Dilip Kumar

For Respondents : No appearance



C.M.A.(MD) Nos.1029 & 1030 of 2011

In C.M.A.(MD)No.1030 of 2011

The Branch Manager,
United India Insurance Company Ltd.,
S.N.Complex, Near Telephone Exchange,
L.P.Road, Adyar,
Chennai – 600 020.

... Appellant

Vs.

1.Jothi,
2.Minor. Mahalakshmi,
3.Minor.Magudeeswaran,
4.Minor Krishnan @ Krishnakumar,
5.Palanichamy,
6.Muniammal,
7.S.Sakthivel.
(Respondents 2, 3 & 4 represented through their
mother and natural guardian/1st respondent)

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the common fair and executable order dated 29.07.2008 passed in M.A.C.O.P.No.154 of 2007 on the file of the Additional District and Sessions cum Fast Track Court of Dindigul.

For Appellant : Mr.N.Dilip Kumar

For Respondents : No appearance

COMMON JUDGMENT

These appeals have been filed challenging the finding on negligence and the quantum of compensation awarded to the respondents in two different claim petitions filed by the legal representatives of the deceased, who died in the same accident.



C.M.A.(MD) Nos.1029 & 1030 of 2011

2. Since these appeals arise out of the a common award in the claim petitions filed by the claimants, these appeals are taken up together.

3. The claimants in both the appeals filed two separate claim petitions stating that while the deceased were riding their TVS 50, a tempo van insured with the appellant came in a rash and negligent manner and dashed against the two wheeler, as a result of which both persons sustained fatal injuries.

4. The owner of the vehicle remained *ex parte* before the Tribunal.

5. The appellant filed a counter stating that the accident took place only due to the negligence of the rider of the two wheeler, since three persons travelled in the two wheeler and a minor was riding the said two wheeler.

6. Before the Tribunal, the claimants examined four witnesses as P.W.1 to P.W.4 and marked Exs.P1 to P12. The appellant examined two witnesses as R.W.1 and R.W.2 and marked Exs.R1 to R5.



C.M.A.(MD) Nos.1029 & 1030 of 2011

7. The Tribunal, after taking into consideration the oral and documentary evidence, awarded the compensation of Rs.2,81,750/-, after deducting 30% towards contributory negligence on the rider, to the claimants in M.C.O.P.No.154 of 2007 (C.M.A.(MD)No.1030 of 2011) and Rs.1,12,000/-, after deducting 30% towards contributory negligence on the rider, to the claimants in M.C.O.P.No.166 of 2007 (C.M.A.(MD)No.1029 of 2011).

8. The learned counsel for the appellant/Insurance Company submitted that the vehicle was ridden by a minor; that since three persons travelled in the two wheeler, the contributory negligence fixed on the rider of the two wheeler has to be enhanced and the compensation awarded by the Tribunal is excessive.

9. Notice to the respondents in both appeals is not necessary in view of the orders this Court proposes to pass.

10. The points for consideration in the instant appeal are as follows:

'a. Whether the finding on negligence is justified?

b. Whether the quantum of compensation of the Tribunal is just and



C.M.A.(MD) Nos.1029 & 1030 of 2011

reasonable?'

WEB COPY

11. As regards the first question, it is seen that the claimants examined P.W.3 and P.W.4/the eyewitnesses to the occurrence besides marking Ex.P1-FIR to corroborate the version of the eyewitnesses regarding the accident. The appellant had not examined the driver of the insured vehicle. In the absence of any evidence contrary to the evidence produced on the side of the claimants, this Court is of the view that the finding of the Tribunal that the accident predominantly took place due to the rash and negligent driving of the insured vehicle cannot be faulted. However, it is seen that admittedly, the three persons were riding in the two wheeler, in which, the deceased travelled and the two wheeler was ridden by a minor. In such circumstances, the contributory negligence fixed on the two wheeler riders cannot be faulted. Therefore, the finding of the Tribunal is just and reasonable. The point No.1 is answered accordingly.

12. As regards the quantum of compensation, the learned counsel for the appellant is unable to point out any infirmity in the award of the compensation except for stating that it is excessive. Since there is no



C.M.A.(MD) Nos.1029 & 1030 of 2011

infirmity in the quantum of compensation, this Court is of the view that the same has to be confirmed. Hence, these appeals are liable to be dismissed.

13. The appellant/Insurance Company shall deposit the compensation amount of Rs.2,81,750/- for the claimants in C.M.A.(MD)No.1030 of 2011 (M.C.O.P.No.154 of 2007) and Rs.1,12,000/- for the claimant in C.M.A.(MD)No.1029 of 2011 (M.C.O.P.No.166 of 2007) with accrued interest at 7.5% p.a., from the date of the claim petition till the date of realization (excluding the period of dismissal for default if any) and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

14. On such deposit, the claimants in both appeals are entitled to withdraw their respective shares, as per the apportionment fixed by the Tribunal, together with proportionate interest and costs, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.



C.M.A.(MD) Nos.1029 & 1030 of 2011

15. The respondents 2 to 4 in C.M.A.(MD)No.1030 of 2011/claimants were minors when the claim petition was filed in the year 2007. They would have attained majority now. Hence, they are permitted to file appropriate application for recording their majority and to withdraw their share.

16. In the result, both these Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

10.09.2024
(2/2)

To:
1.The Additional District and Sessions Judge,
Fast Track Court, Dindigul.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD) Nos.1029 & 1030 of 2011

SUNDER MOHAN, J.

apd

C.M.A.(MD) Nos.1029 & 1030 of 2011

10.09.2024
(2/2)