



C.M.A(MD)No.1193 of 2012

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.1193 of 2012 and
M.P.(MD)No.1 of 2012

The National Insurance Company Limited,
No.16, State Bank Road,
PB No.3928, Coimbatore.

... Appellant

Vs.

1.Sivagami
2.Minor.E.Mano Ranjith
3.Minor.E.Akilan

(Minors represented by their next friend
and natural guardian and mother Sivagami
the 1st Respondent)

4.T.Veerappan
5.D.Mariamammal
6.Dharmalingam

...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree, dated 20.09.2010, made in M.C.O.P.No.35 of 2008, on the file of the Motor Accident Claims Tribunal, District Court, Karur.

For Appellant	: Mr.J.S.Murali
For R1 to R3	: Mr.Mathiyalagan
R2 and R3	: Minors represented by R1
For R5 and R6	: No Appearance



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JUDGMENT

The Insurance Company has preferred this Civil Miscellaneous Appeal.

2. It is a case of fatal. The contention of the Insurance Company is that the mini goods carriage vehicle is involved in the accident and the deceased had travelled in the goods carriage vehicle. As per policy, only the Driver is allowed. The deceased ought not to have travelled in the goods carriage vehicle. Therefore, the liability cannot be fixed on the Insurance Company. The claimants have not taken the plea whether the deceased was travelling as owner of the goods. Therefore, the matter ought to be remitted back to the Tribunal but since it is an accident which occurred in the year 2007, this Court is not inclined to remit the matter back to the Tribunal.

3. For the reasons started supra this Court is of the considered opinion that the entire negligence cannot be fixed on the Insurance Company and a portion of the compensation ought to be deducted in order to meet the end of justice. The owner of the vehicle is also liable to pay the compensation. Therefore, 30% liability is fixed on the owner of vehicle and the balance 70% liability is fixed on the Insurance Company. The Insurance Company shall pay 70% as their liability



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and shall also pay 30% liability of the owner and recover the 30% from the owner of the vehicle.

4. As far as contributory negligence is concerned, the deceased also ought to have been careful and he ought not to have travelled in a goods carriage vehicle. As far as the award amount is concerned, since the deceased has travelled in the goods carriage vehicle when he ought not to have travelled, he has to be termed as gratuitous passenger. Therefore, in order to meet the ends of justice, this Court is deducting Rs.1,00,000/- from the award amount granted by the Tribunal. Thus, the total compensation awarded by the Tribunal i.e., Rs. 6,74,400/- is reduced to Rs.5,74,400/- by this Court.

5. The Insurance Company is directed to deposit Rs.5,74,400/- with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their shares (the respondent Nos. 1 to 3, 5 and 6 herein are entitled to Rs.1,49,400/-, Rs.1,50,000/-, Rs.1,50,000/-, Rs.85,000/- and Rs.40,000/- respectively) (respondents 5 and 6 are parents of the deceased)



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with proportionate accrued interests and costs, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal. The appellant Insurance Company is entitled to recover 30% of the compensation from the owner of the vehicle / 4th respondent herein, by way of filing Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in **2004 (2) CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others)**. The Insurance Company shall withdraw the excess amount, if any. The Tribunal is directed to deposit the shares of the minor children in a nationalized bank until the children attains majority. The first respondent herein, who is the mother/guardian, is permitted to withdraw the interest amount once in three months. Once the minor claimants attain majority, they are permitted to withdraw their shares with accrued interests.

6. With the above said observations, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

16.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Tmg



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- 1.Motor Accident Claims Tribunal,
District Court, Karur.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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