



C.R.P(MD).No.2294 of 2008 and
C.M.A(MD).Nos.178, 179 & 1173 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	:	26.03.2024
Pronounced on	:	15.07.2024

CORAM:

THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN

C.R.P.(MD).No.2294 of 2008
and
C.M.A(MD).Nos.178, 179 and 1173 of 2013
and
M.P.(MD).Nos.1, 1 & 1 of 2013 and
C.M.P(MD).No.7668 of 2017

C.R.P(MD).No.2294 of 2008:

1. N.Krishnan (Died)

2.V.Vasanth

3.K.Nagamony

4.K.Rohinkumar

... Petitioners

*(Appellants 2 to 4 brought record as LRs of deceased sole Petitioners
vide Order dated 01.06.2016 made in C.M.P.(MD).Nos.3135 to 3136
of 2016 in C.R.P(MD).No.2294 of 2008)*

Vs.

1. Bama

2. M/s.Shri Sakthi Vinayagar Automobiles,
96, Pensioner Street, Dindigul.

1/20



C.R.P(MD).No.2294 of 2008 and
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3. M/s.National Insurance Co., Ltd.,
through its Branch Manager,
Dindigul.

*(2nd Respondent was set exparte before the Tribunal.
Hence, no notice is necessary to it)*

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the Judgment and Decree dated 17.10.2007 made in M.C.O.P.No.132 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court No.I), Tirunelveli, by allowing the Revision Petition.

For Petitioner : Mr.M.Suri

For Respondents : Mr.N.S.Ramakrishna Dass for R3

C.M.A.(MD).No.178 of 2013:

The Branch Manager,
National Insurance Company Ltd.,
Dindigul.

... Appellant

Vs.

1. Bama

2. Supriya

*(2nd Respondent declared as major and the guardianship discharged
vide Court order dated 13.04.2016 made in C.M.P.(MD).No.2585 of
2016 in C.M.A.(MD).No.178 of 2013)*



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3. Subramania Pillai

4. Kolammal

5. M/s.Shri Sakthi Vinayagar Automobiles,
96, Bensar Street, Dindigul.

6. Krishnan.

... Respondents

(5th Respondent was set exparte. Hence no notice is necessary to him)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to set aside the fair and decretal order made in M.C.O.P.No. 1754 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Court, (Fast Track Court No.I), Tirunelveli, dated 17.10.2007 and allow the appeal.

For Appellant : Mr.A.S.Mathialagan

For Respondents : Mr.T.Selvakumaran for R1 to R4

C.M.A.(MD).No.179 of 2013:

The Branch Manager,
National Insurance Company Ltd.,
Dindigul.

... Appellant

Vs.

1. Bama

2. M/s.Shri Sakthi Vinayagar Automobiles,
96, Bensar Street, Dindigul.



C.R.P(MD).No.2294 of 2008 and
C.M.A(MD).Nos.178, 179 & 1173 of 2013

3. Krishnan.

... Respondents

WEB COPY (2nd Respondent was set exparte. Hence no notice is necessary to him)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to set aside the fair and decretal order made in M.C.O.P.No. 132 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District Court, (Fast Track Court No.I), Tirunelveli, dated 17.10.2007 and allow the appeal.

For Appellant : Mr.A.S.Mathialagan

C.M.A.(MD).No.1173 of 2013:

1. N.Krishnan (Died)

2. V.Vasantha

3.K.Nagamony

4.K.Rohinkumar

... Petitioners

(Appellants 2 to 4 are brought on record as LR's of the deceased sole Appellant vide Court Order dated 02.02.2024 made in C.M.P. (MD).Nos.3132 to 3134 of 2016 in C.M.A.(MD).No.1173 of 2013)

Vs.

1. Bama

2. Minor Supriya

(represented by her mother and natural guardian 1st Respondent)

4/20



C.R.P(MD).No.2294 of 2008 and
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3. Subramania Pillai

4. Kolammal

5. M/s.Shri Sakthi Vinayagar Automobiles,
96, Bensar Street, Dindigul.

6. M/s.National Insurance Co., Ltd.,
through its Branch Manager,
Dindigul.

... Respondents

(5th Respondent was set exparte. Hence, no notice is necessary to it)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to set aside the Judgment and Decree dated 17.10.2007 and made in M.C.O.P.No.1754 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Court, (Fast Track Court No.I), Tirunelveli, and allow the Appeal.

For Appellant : Mr.M.Suri

For Respondents : Mr.A.S.Mathialagan for R6

COMMON ORDER

The Insurance Company and the owner of the Gypsy car bearing registration No. TN74A8298, filed this C.M.A., and C.R.P, challenging the award passed against them by fixing the negligence. On 23.10.2005, the deceased was riding his two wheeler bearing registration No.TN74E8924, in



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the Nagercoil to Tirunelveli road before which a lorry bearing registration No.TN57E5996 was proceeding driven by P.W.1. The lorry reduced its speed and pulled off to the road and suddenly, swerved to the southern side without any signal and thus, the accident happened and the deceased hit the lorry and fell into the back tire of the lorry and the lorry ran over his head and he died.

2.In the said motor cycle, P.W.1 and his child were also travelling. The child was lucky to escape without any injury and P.W.1 sustained grievous injuries. Hence, the child and P.W.1 filed the claim petition in M.C.O.P.No.1754 of 2005 claiming compensation as dependents of the deceased. The injured P.W.1 also filed separate M.C.O.P.No.132 of 2006 for the injuries sustained by her.

3. During the course of the trial, the owner of the lorry filed the counter disputing the accident, shifting the entire negligence on the part of the Gypsy Car as per the FIR and the final report and hence, they disowned the liability. The owner of the Gypsy car appeared and filed the counter



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denying the negligence on the Gypsy Car. He specifically pleaded that since R.W.1 swerved suddenly from north to south without any signal, the two wheeler hit the lorry and the deceased fell into the back wheel of the lorry and the two wheeler fell under the Gypsy car. Hence, the driver was no way responsible for causing the accident. With these pleadings, the learned trial Judge proceeded the trial.

4. During the course of the trial proceedings, P.W.1 to P.W.3 were examined and on the side of the appellant insurance company R.W.1 and R.W.2 were examined. R.W.1 is the lorry driver and R.W.2 is the Investigating Officer, who conducted the investigation in the criminal case.

5. The learned trial Judge after considering the evidence fixed 75% negligence upon the lorry driver and 25% negligence upon the Maruthi Gypsy Car and granted a sum of Rs.7,99,660/- as compensation. Challenging the same, both the owner of the vehicle and the insurance company filed appeals regarding the negligence and no appeal was filed against the quantum of compensation. In view of the limited plea relating to



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the negligence, this Court is not going into the quantum.

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6. The learned counsel for the insurance company submitted that to prove the case of the involvement of the Maruthi Gypsy Car, he examined the lorry driver and the Investigating Officer, who registered the case against the driver of the Gypsy car and who filed the final report. As per the opinion of the investigating officer, the driver of the Gypsy car was responsible for the accident and hence, on the basis of the above available materials, the learned tribunal Judge correctly fixed 25% upon the Maruthi Gypsy Car and 75% upon the driver of the lorry driver. There is no need for any interference in the ratio fixed for the negligence.

7. The learned counsel for the owner of the Gypsy Car submitted that the manner of the accident and also the perusal of the evidence of R.W.1 and the independent evidence of P.W.2, clearly demonstrated the accident. It is true that there is a final report against the driver of the Gypsy Car and the same is not bar to appreciate the evidence before the tribunal and decide the matter on merits. The learned trial Judge discussed the entire matter up



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to paragraph Nos.53 and 54 and took a deviation suddenly in the conclusion line without any finding, that the Maruthi Gypsy car also was responsible for the accident.

8. Hence, he seeks for the interference regarding the perversity of the finding of the learned trial Judge. He further submitted that even the learned Judge did not discuss about the involvement of the Maruthi Gypsy Car. In the said circumstances, he seeks to interfere with the finding fixing the liability upon the Gypsy car.

9. This Court considered the rival submission made by the learned counsel appearing on either side and perused the materials available on record and framed the following points for determination:-

9.1. Whether the Court below is correct in applying composite negligence in this case fixing the negligence upon 75% lorry driver and 25% upon Gypsy driver.



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10.P.W.1 wife of the deceased deposed that on 23.10.2005 around 09.00 p.m., her husband rode the two wheeler bearing registration No.TN 74 E8924 towards North -South direction and in the said two wheeler she and her small female child also travelled as pillion riders in the East-West Nagercoil-Tirunelveli road following the lorry bearing Registration No.TN 57 E 5996. When the lorry reached near the place of Aasirvatham Petrol Bulk, R.W.1/lorry driver reduced its speed and pulled off to the road side and suddenly swerved to the Eastern side without giving any signal and the two wheeler of her husband hit the lorry and in the result, he fell into the back wheel of the lorry and the lorry ran over his head. The said evidence is corroborated by the evidence of P.W.2. P.W.2 is an independent witness and he cogently deposed about the incident. The evidence of both P.W.1 and P.W.2 are cogent and without any infirmities. There was no reason to disbelieve their presence and evidence. But the learned Tribunal Judge has not appreciated the same in proper manner.

11.The learned trial Judge gave a finding that *“the accident could have been avoided, if the lorry had stopped and observed the traffic coming*



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*from both side and then given proper signal and turned the lorry”. After recording such finding, erroneously applied the theory of the composite negligence. When the learned tribunal Judge accepted the case of the claimants that the accident happened due to the sudden turn of the lorry because of its driver's negligence by not taking abundant caution, the learned tribunal Judge committed error in applying the principle of composite negligence. The composite negligence is not applicable to the present case. As per the law laid down by the Hon'ble Supreme Court and various High Courts, when there was no contribution on the part of either the injured or deceased to the accident, the principle of composite negligence is not applicable. Only in a case of accident, which happened due to the result of collective negligence of one or more tortfeasors, the theory of composite negligence would arise. The same was elaborately considered by the Hon'ble Supreme Court in the case of ***T.O.Anthony Vs. Karvarnan and others*** reported in ***2008 3 SCC 748***, and the Hon'ble Supreme Court *has held as follows:**

“6. ‘Composite negligence’ refers to the negligence on the part of two or more persons. Where a person is injured as a result of



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negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are



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involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50 : 50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."

11.1. The said principle has been affirmed by the Hon'ble three Judges Bench of the Supreme Court in the case of ***Khenyei v. New India Assurance Co. Ltd.***, reported in (2015) 9 SCC 273:-



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15. There is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the accident cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence; whereas in the case of composite negligence, a person who has suffered has not contributed to the accident but due to the outcome of combination of negligence of two or more other persons.

12. Therefore the learned trial Judge committed error in applying the principle of composite negligence. From the evidence of P.W.2, independent eye witness, it is clear that lorry, two wheeler, Maruthi Gypsy Car were all proceeding in the same direction. The lorry was heading first followed by the two wheeler and then by the Maruthi Gypsy Car. When, the lorry suddenly slowed down and swerved to northern side in the west-east road, and the two wheeler tried to pass the lorry and the lorry suddenly without any signal turned to the south side. Hence, the two wheeler hit the lorry and the deceased fell into the back wheel of the lorry and the lorry ran over his head. The driver of the lorry was examined as R.W.1. He has not deposed in the line of the pleading taken by the insurance company. The



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insurance company took a plea that the Gypsy driver is responsible for the accident. His evidence is that he was not responsible for the accident and he heard the noise and stopped the vehicle and got down from the vehicle and saw crowded people at the back side of the tire. He further deposed that he heard the noise of the crashing of the car. He also stated to avoid any untoward happening he went straight to the police station. From his evidence, the insurance company's plea that accident was caused by the Gypsy vehicle is not acceptable. Therefore, the finding of the learned trial Judge that both the Gypsy vehicle and the lorry are compositely responsible for the accident cannot be accepted. The accident happened only due to the negligence of the lorry driver.

13. The Inspector of Police deposed that final report was filed against the Gypsy driver. On the basis of the deposition, the learned counsel for the insurance company of the lorry submitted that the learned trial Judge is not correct in viewing the case as a case of composite negligence. They submitted that the learned trial Judge erred in fixing 75% of the negligence on the lorry. This Court already discussed the evidence of the independent



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witness P.W.2. As per the discussion made earlier, this Court is of the view that the accident was caused due to the sole negligence on the part of the lorry driver. It is settled principle that the filing the final report against the Gypsy driver is not a ground to apply the theory of composite negligence. The Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs. Chamundeswari and others* reported in **2021 18 SCC 596**, has held that if the evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given primacy over the contents of the FIR. Therefore, the filing of the final report against the Gypsy driver is not a ground to disbelieve the evidence of the P.W.1 and P.W.2. Therefore, the plea of the insurance company, that the accident was caused due to the negligence of the Gypsy car driver on the basis of the final report filed deserves to be rejected.

14. In view of the above discussion, this Court finds that the accident has happened due to the rash and negligent driving of R.W.1/lorry driver and he is solely responsible for the accident.



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15. Hence, the award passed by the learned trial Judge as against the owner of the Gypsy Car is liable to be set aside and the lorry driver is solely responsible for the accident and hence, the insurance company which insured lorry is liable to pay the entire compensation awarded by the Tribunal.

16. Accordingly, the appeal in C.M.A.(MD).No.1173 of 2013 is allowed in the following terms:

16.1. Fixing the negligence in the ratio of 75% on the lorry driver and 25% on the Gypsy driver in the award passed in M.C.O.P.No.1754 of 2005, dated 17.10.2007, by the Motor Accident Claims Tribunal, Additional District Court, (Fast Track Court No.1) Tirunelveli, is set aside and this Court fixes the entire negligence on the lorry driver and in the result, the fifth and sixth respondents are hereby directed to pay the entire compensation amount of Rs.7,99,660/- with interest at the rate of 7.5% p.a., less the amount if already deposited, within a period of four weeks from the date of receipt of a copy of the judgment copy. On such deposit, the



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claimants are permitted to withdraw their share amount as per the apportionment made by the Tribunal.

17. Accordingly, C.R.P.(MD).No.2294 of 2008 is allowed in the following terms:

17.1. Fixing the negligence in the ratio of 75% on the lorry driver and 25% on the Gypsy driver in the award passed in M.C.O.P.No.132 of 2006, dated 17.10.2007, by the Motor Accident Claims Tribunal, Additional District Court, (Fast Track Court No.1) Tirunelveli, is set aside and this Court fixes the entire negligence on the lorry driver and in the result, the respondents 2 and 3 are hereby directed to pay the entire compensation amount of Rs.8,949/- with interest at the rate of 7.5% p.a., less the amount if already deposited, within a period of four weeks from the date of receipt of a copy of the judgment copy. On such deposit, the claimant is permitted to withdraw her share amount as per the order made by the Tribunal.

18. C.M.A.Nos.178 and 179 of 2013 are dismissed by confirming the fair and decretal order made in M.C.O.P.Nos.1754 of 2005 and 132 of



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2006, dated 17.10.2007, by the Motor Accident Claims Tribunal, Additional
District Court, (Fast Track Court No.I), Tirunelveli.

Consequently, the connected Civil Miscellaneous Petitions and
Miscellaneous Petitions are also closed.

15.07.2024

NCC : Yes / No
Index : Yes / No
Internet : *Yes / No*
sbm

To

1. The Additional District Judge (Fast Track Court No.I),
Motor Accident Claims Tribunal, Tirunelveli,
2. The Section Officer,
VR Section(Records)
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.
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