



C.M.A(MD)No.293 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.293 of 2023

and

C.M.P.(MD)Nos.3548, 12525 and 12697 of 2023

The Branch Manager,
Sree Ram General Insurance Company Limited,
No.30, HAK Road Nearing ICICI Bank,
Chinna Chokkikulam, Madurai – 625 002.

... Appellant

Vs.

1.Kalaiselvi
2.Minor Rithika
3.Minor Sindhuja

(Minors 2 and 3 represented through their
mother and guardian Kalaiselvi, the 1st
respondent herein)

4.Mangayarkarasi
5.Veeramuthusamy
6.Palanichamy

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree made in M.C.O.P.No.604 of 2015 dated 30.04.2021 on the file of the Motor Accident Claims Tribunal, Additional District Court, Pudukkottai.



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C.M.A(MD)No.293 of 2023

For Appellant : Mr.D.Sivaraman
For R1 to R5 : Mr.N.Balakrishnan
For R6 : No appearance
R2 and R3 : Minors represented by R1

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 two-wheeler has hit the tractor from behind, therefore, it is the mistake of the two-wheeler but the Tribunal has fixed contributory negligence on the two-wheeler only 20%, which is erroneous besides being on a lower side. The learned Counsel for the Insurance Company prayed to fix the negligence as 50-50 on the tractor and on the two-wheeler.

3. It is seen that the mode of accident is that the tractor was running in front and the two-wheeler was coming behind. When the tractor has applied sudden break, the two-wheeler has hit the tractor and the accident has occurred. The two-wheeler ought to have maintained proper distance from the tractor. Since the two-wheeler has failed to maintain proper distance, this Court is inclined to fix the contributory negligence on the two-wheeler as 30% and 70% on the tractor.



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4. The learned Counsel for the Insurance Company vehemently contended that the vehicle was not involved in the accident at all and the entire negligence ought to be fixed on the tortfeasor, i.e., the deceased. Further submitted that there is discrepancy in FIR and the accident report. In the FIR, it has been mentioned as tractor and in the accident report, it is stated as tripper lorry. But this contention cannot be accepted since the vehicle which was insured with the Insurance Company was involved in the accident. Further the accident report was not filed before this Court, hence the said accident report cannot be taken into account. Therefore, this contention of the Insurance Company is rejected.

5. The reduced compensation awarded by this Court is as under:

	Awarded by the Tribunal	Awarded by this Court
Compensation arrived at	Rs.18,55,000/-	Rs.18,55,000/-
Contributory negligence	20%	30% (enhanced)
Deducting contributory negligence	Rs.18,55,000/- – Rs.3,71,000/-	Rs.18,55,000/- – Rs.5,56,500/-
Total compensation	Rs.14,84,000/-	Rs.12,98,500/- (reduced)

6. The appellant Insurance Company is directed to deposit Rs.12,98,500/- (Rupees Twelve Lakh Ninety Eight Thousand and Five Hundred only) with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the



C.M.A(MD)No.293 of 2023

WEB COPY

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 with proportionate accrued interests and costs in the ratio fixed by the Tribunal, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal. The Tribunal is directed to deposit the shares of the minor children in a nationalized bank until the children attain 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.

7. With the above said directions, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

25.03.2024

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

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C.M.A(MD)No.293 of 2023

To

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



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C.M.A(MD)No.293 of 2023

S.SRIMATHY, J.

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C.M.A(MD)No.293 of 2023

25.03.2024