



*C.M.A.(MD)No.147 of 2019*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **25.06.2024**

CORAM

**THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR**

**C.M.A.(MD)No.147 of 2019**

**and**

**C.M.P.(MD)No.1903 of 2019**

The Branch Manager,  
Bajaj Alliance Insurance Company  
Limited,  
Having office at TPK Road,  
Madurai.

... Appellant / 2<sup>nd</sup> Respondent

Vs.

1.Amudha

2.Minor. Saran

3.Minor. Karthika

4.Ponnusamy

5.Ramathaal

... Respondents / Petitioners

6.Mariammal

7.Kuppusamy



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8. The Branch Manager,  
The New India Assurance Company  
Limited,  
Having office at 116-A,  
GST Road, Chengalpat Town,  
Chengalpat.

... Respondents / Respondents No.1, 3 & 4

*(Minor respondents 2 and 3 are represented through  
their mother, next friend and guardian the 1<sup>st</sup>  
respondent herein)*

**PRAYER :** Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, to set aside the judgment and decree passed by the Principal District Judge of Dindigul and to dismiss the claim petition in M.C.O.P.No.356 of 2011 as against this appellant.

For Appellant : Mr.V.Sakthivel

For R-1 to R-5 : Mr.C.K.M.Appaji

For R-6 : No appearance

For R-7 : Mr.M.K.Suresh

For R-8 : Mr.B.Rajesh Saravanan

### **JUDGMENT**

The present appeal has been filed by the Bajaj Alliance Insurance Company, who were arrayed as second respondent in M.C.O.P.No.356 of



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2011 on the file of the Principal District Court, Dindigul, challenging the negligence fixed by the Tribunal.

2. As per the claim petition, the deceased was an occupant of a car, which was owned by the third respondent and insured with the fourth respondent in the claim petition. While the car was proceeding from Tiruchirappalli to Dindigul, a tractor owned by the first respondent and insured with the second respondent was parked in the middle of the road without any warning lights and therefore, the third respondent had dashed against the said tractor and in the said accident, the deceased had sustained grievous injuries and thereafter, passed away. The claimants have prayed for a compensation of Rs.20,00,000/-.

3. The owner of the tractor had remained *ex parte*. The insurer of the tractor, namely, the present appellant had filed a counter contending that, the car which was moving from Tiruchirappalli to Dindigul is expected to stick on to the southern lane. On the other hand, the accident has taken place north of the northern lane and therefore, the entire



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negligence is on the part of the driver of the car and hence, they are not liable to pay any compensation. The insurer of the car had filed a counter supporting the case of the claimants.

4. The Tribunal after considering the oral and documentary evidence has arrived at a finding that, the accident has taken place only due to the fact that the tractor was parked in the middle of the road without any warning lights and mulcted the liability upon the Bajaj Alliance Insurance Company which is challenged in the present appeal.

5. According to the learned Counsel appearing for the appellant, as per the rough sketch marked as Exhibit R.2, the car, instead of sticking to the southern lane of the road has crossed the centre meridian, northern lane and thereafter, dashed against the tractor, which was parked further north of the northern lane. Therefore, the entire negligence is attributable only to the driver of the car and hence, neither the owner of the tractor nor the appellant Insurance Company is liable to pay the compensation.



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6. The learned counsel appearing for the 8<sup>th</sup> respondent who is the insurer of the car had relied upon the evidence of P.W-3 and contended that though the accident has taken place on the northern side of the road, it is because of the fact that the police had diverted the traffic and the vehicles were moving on both the directions where in the same lane. The parking of the tractor without parking lights, had caused the accident. Hence, he pleaded for sustain to the award passed by the Trial Court.

7. Heard the learned counsel appearing for the Appellant Insurance Company, the learned counsels appearing for the respondents and carefully perused the materials available on record.

8. The deceased was an occupant of the car which had dashed against the rear side of the tractor which is insured with the Appellant Insurance Company. According to the learned counsel appearing for the Appellant Insurance Company, the accident have been taken place on the northern side of the four way which is meant for the vehicles coming



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from the opposite direction, and the same would clearly establish the negligence on the part of the driver of the car. Therefore, the insurer of the car alone is liable to pay the compensation. He had mainly relied upon Ex.R-2 rough sketch. The driver of the car has been examined as P.W-2, in his chief examination, he has categorically deposed that the police authorities have put up barricade and have diverted the traffic to the northern side of the median. In the northern lane, the tractor was parked without parking light. The Appellant Insurance Company has not cross examined P.W-3 on the above said aspect.

9. Therefore, it is clear that the vehicles moving on both the directions were using only the northern lane in view of the diversion of traffic. In such circumstances, no negligence can be attributed to the driver of the car for choosing the northern lane. However, the driver of the tractor ought not to have parked the tractor without parking light in a lane in which there was a bi-directional of movement of vehicles. In such circumstances, the Tribunal was right in mucking entire liability upon the driver of the tractor and in turn the



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Appellant Insurance Company. In view of the same, I do not find any merits in the Appeal.

10. Accordingly, the Civil Miscellaneous Appeal stands dismissed.

There shall be no order as to costs. Consequently, connected civil miscellaneous petition is closed.

**25.06.2024**

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

To

- 1.The Principal District Judge,  
Dindigul.
- 2.The Section Officer,  
Vernacular Record Section,  
Madurai Bench of Madras High Court,  
Madurai.

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**R.VIJAYAKUMAR, J.**

Sml

**Judgment made in**  
**C.M.A.(MD)No.147 of 2019**

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