



C.M.A(MD).No.600 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 29.08.2024

CORAM:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**
AND
THE HON'BLE **MR.JUSTICE K.K.RAMAKRISHNAN**

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and

C.M.P(MD).No.7569 of 2024

1.National Insurance Company Ltd.,
Divisional Office, ED Scope Minar Core 3,
III Floor, Laxmi Nagar, Delhi 110 092
Through its Divisional Manager,
(Certificate No.39010231216200307910
for the period from 09.07.2021 to 08.07.2022)

2.National Insurance Company Ltd.,
Divisional Office,
D.No.37, CSN Road,
Tirunelveli Junction,
Through its Divisional Manager

... Appellants

.Vs.

1.Ramathilagam
2.Renukasre
3.Vijayalakshmi
4.Ramadoss
5.M.Arumugam

... Respondents



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PRAYER: Writ Appeal has been filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Tirunelveli, in MCOP No.337 of 2022 dated 08.02.2024.

For Appellants	: Mr.D.Sivaraman
For Respondents	: Mr.N.Tamilmani (For R1 to R4)
	No appearance (for R5)

JUDGMENT

(Judgment of the Court was delivered by **P.VELMURUGAN,J.**)

Challenging the liability and negligence fixed by the Motor Accidents Claims Tribunal - I Additional District and Sessions Judge, Tirunelveli, in M.C.O.P.No.No.337 of 2022 dated 08.02.2024, the appellants/Insurance Company have filed this appeal.

2. Brief facts of the case are that on 18.10.2021, at about 19.50 hours, when the deceased Venkateswaran was riding a motorcycle bearing Registration No.TN-67-BL-7755 on Sattur-Sivakasi main road, he stopped his motorcycle near Nayara Petrol bulk, Veerapandiapuram, on the extreme southern side of the said road to cross the road from south to north. At that time, another motorcycle



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bearing Registration No.TN-67-AF-7263 driven by the first respondent in a rash and negligent manner came from west to east and dashed against the deceased Venkateswaran. As a result, the said Venkateswaran sustained grievous injuries and died on the spot. In this regard, a case in Cr.No.453 of 2021 under Section 304(A) I.P.C., has been registered by the jurisdictional police. Alleging that the accident had taken place due to the rash and negligent driving of the first respondent, the legal heirs of the deceased laid a petition, claiming compensation of Rs.1,00,00,000/- (Rupees One Crore only).

3. According to the learned counsel for the appellants/respondents 2 & 3, as per the evidence of eyewitnesses, the deceased was standing at the left side of the road, whereas a two wheeler driven by the fifth respondent came from the west-east. Therefore, it is impossible to cause accident as per the manner mentioned in the claim petition. Further, he would submit that the postmortem report also shows that the deceased was under the influence of alcohol and the percentage of the influence, is not normal. According to them, the Tribunal failed to consider that both the vehicles are two-wheelers and also at the time of accident, in the two wheeler of the deceased, he along with two others had travelled. They could not drive the vehicle maintaining such high speed. Even then, the accident had



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occurred. Therefore, the ratio of contributory negligence fixed by the Tribunal at 10% is not acceptable one.

4. The learned counsel for the respondents 1 to 4 /claimants would submit that the rough sketch and FIR had spoken about the actual manner of accident. The eyewitness and FIR corroborated by the rough sketch as the deceased at the time of accident was standing at the left side of the road and waiting for crossing the road. At that time, the offending vehicle came in a rash and negligent manner dashed against the deceased and thereby, the deceased succumbed to the injury. The influence of alcohol is not a reason for accident and therefore, the Tribunal rightly fixed the contributory negligence at 10%.

5. Head both sides and perused the materials available on record.

6. Admittedly, both the vehicles are two-wheelers and the claimants examined P.W.2 as eyewitness, who is the informer to the police for registering an FIR. Based on the information given by P.W.2 only, the police registered FIR, whereas when he has given evidence before the Court even in the chief examination itself, he has stated that the deceased was standing at the left side of



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the road. The offending vehicle came from west-east. Therefore, the evidence of P.W.2 who is said to have been eyewitness, is not corroborating the manner of the accident as mentioned in the FIR and also rough sketch. Therefore, when there is a contradiction between the eyewitness and the other materials, the eyewitness has to be taken into consideration and in this case, P.W.2 has stated before the Court that the deceased was standing at the left side of the road.

7. Considering the postmortem report and also the deceased was under influence of alcohol and both offending vehicles are two-wheelers, the liability has to be fixed at 50% and the Tribunal failed to consider the same. Therefore, this Court is of the view that the said finding of the Tribunal regarding fixation of liability alone is hereby modified from 10% to 50%. In all other heads, the amounts awarded by the Tribunal stands unaltered.

8. In that view, this Civil Miscellaneous Appeal is partly allowed. The appellants are directed to deposit the entire award amount equally with accrued interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are permitted to withdraw the award amount as per the ratio



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of apportionment made by the Tribunal, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

(P.V.,J.) (K.K.R.K.,J.)
29.08.2024

NCC : Yes/No
Index : Yes / No
Rmk

To

I Additional District and Sessions Judge,
Motor Accident Claims Tribunal, Tirunelveli.



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P.VELMURUGAN,J.
and
K.K.RAMAKRISHNAN,J.

Rmk

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