



C.M.A(MD)No.819 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.819 of 2022

and

C.M.P.(MD).No.8833 of 2023

The Branch Manager,
M/s.The Oriental Insurance Company Limited,
No.73/B-1, Salai Road,
Lakshmi Complex, 4th Floor,
Thillainagar, Trichy – 18.

... Appellant

Vs.

1.A.Senthilkumar @ Renganathan
2.P.Perumal

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree passed in M.C.O.P.No.583 of 2015 dated 17.11.2021 on the file of the Motor Accident Claims Tribunal cum Special Sub Court, Thiruchirapalli.

For Appellant	: Mr.C.Jawahar Ravindran
For R1	: Mr.S.T.Gopinath
R2	: Given up



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JUDGMENT

The Insurance Company has filed this Civil Miscellaneous Appeal.

2.It is a case of injury. The contention of the Insurance Company is that the entire liability is fixed on the Insurance Company which is erroneous. A two-wheeler was coming with three persons and a car dashed the said two-wheeler. Since the car is not having any policy, the claimant has not impleaded the car as a party. Moreover, the two-wheeler riders were not wearing helmet and the license of the two-wheeler Driver was also not produced. Moreover, the Driver of the two-wheeler is a minor. For all the violation the insurance company is not liable to pay the compensation. Atleast the Tribunal ought not to have fixed the entire negligence on the Insurance Company and ought to have considered for fixing contributory negligence of the two-wheeler.

3. After hearing the arguments, this Court is of the considered opinion that non impleading of owner and Driver of the car is erroneous. However, the injured person cannot be deprived of his compensation. The Tribunal has granted Rs. 2,46,795/- as total compensation. Hence, this Court is fixing the liability on the Insurance Company as 60% and the balance 40% shall be fixed on the owner of



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the car. As far as the liability fixed on the car owner is concerned, the matter is remitted back to the Tribunal. As far as the 60% liability fixed on the Insurance Company is concerned, the Insurance Company shall deposit the same.

4. Therefore, the appellant Insurance Company is directed to deposit Rs. 1,48,077/- 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 four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same with 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 the same from the owner of the vehicle / 2nd 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)**.

5. As far as the liability fixed on the owner is concerned, the claimant is directed to implead the owner and Driver of the car and contest the case before the Tribunal. Hence, the case is remitted back as far as liability of the balance amount



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is concerned.

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

08.03.2024

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

Tmg

To

- 1.Motor Accident Claims Tribunal /
Special Sub Court, Thiruchirapalli.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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