



CMA(MD).No.129 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.M.A. (MD).No.129 of 2022

and

C.M.P. (MD).No.1142 of 2022

The Manager,
National Insurance Company Limited,
Manojiappa Street,
South Main Street,
Thanjavur.

... Petitioner

Vs

1. Senthil,

2. Rajasekaran,

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Special Sub Court, Thanjavur in MCOP No.602 of 2018 dated 17-12-2018.



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CMA(MD).No.129 of 2022

For Appellant : Mr. D.Sivaraman
For R1 : Mr.Raja Karthikeyan
For R2 : Mr.R.Karthic Rajan

JUDGMENT

This appeal is filed by the Insurance Company against the award passed by the Tribunal.

2. It is the case of injury. The learned Counsel for the appellant submitted that the claimant had deposed before the Tribunal that he could not control the speed of the vehicle, therefore, the claimant hit the tractor which was travelling in front of him. When it is evident that the claimant had driven the vehicle in a high speed, then the negligence is only on the part of the claimant and there is no negligence on the part of the driver of the tractor, in such circumstances the Insurance Company cannot be made liable to pay the entire compensation.

3. However, the said contention of the Insurance Company cannot



CMA(MD).No.129 of 2022

be entertained since the driver of the tractor has also committed mistake by taking a right turn without any signal or light indicating that he would be turning on the right side.

4. This Court by relying the case of ***Raj Rani & Ors vs Oriental Insurance Co.Ltd.& Others***, is of the considered opinion that both the drivers of the two-wheeler as also the tractor having contributed to the accident, the extent of contributory negligence should be calculated as 50% each. But the Tribunal erred in fixing contributory negligence of 80% on the part of the tractor and 20% on the part of claimant. Moreover, on seeing the sketch of the accident, it clearly shows that the claimant has driven the vehicle at extremely high speed. Therefore, contributory negligence ought to be fixed as 50% each.

5. The learned Counsel for the first respondent submitted that the Insurance Company has paid only 10% of contributory negligence. Hence, based on the above said order, the amount shall be re-worked and the balance amount shall be paid to the claimant.



CMA(MD).No.129 of 2022

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6. With the above said direction, this Civil Miscellaneous Petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

07.02.2024

Index : yes / No
Internet : yes / No

jbr

To
1.MACT (Special Sub Court),
Thanjavur.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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CMA(MD).No.129 of 2022

S.SRIMATHY, J.

jbr

C.M.A. (MD).No.129 of 2022

07.02.2024