



C.M.A(MD)No.767 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.767 of 2021
and
C.M.P.(MD)No.7031 of 2021

The Branch Manager,
The New India Assurance Company Limited,
B-Block 21, 2nd Floor,
Mekkamilan House,
Patullos Road,
Chennai Metropolitan City.

... Appellant

Vs.

1.Rajan
2.Manjula
3.Priya
4.Latha
5.Veeramanikandan

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, against the Judgment and Award made in M.C.O.P.No.274 of 2019 dated 02.12.2020 on the file of the Motor Accidents Claims Tribunal, Additional District Judge (FTC), Theni.

For Appellant	: Mr.D.Sivaraman
For R1 to R3	: Mr.B.Arun
For R4&R5	: No Appearance



JUDGMENT

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The Insurance Company has preferred this Civil Miscellaneous Appeal.

2. It is a case of fatal. The nature of accident is that the deceased was a was travelling in a two-wheeler as pillion rider. The two-wheeler is not having any comprehensive policy but is having “act policy”. The car which was coming behind the two-wheeler dashed against the two-wheeler, hence, the pillion rider fell on the road, sustained injuries and died on the spot. The car is not having any insurance coverage. FIR is filed against the Driver of the car and the entire negligence is fixed on the car. In spite of the same, the Tribunal has fixed the negligence on the car but directed the Insurance Company to pay the liability. The available is only for the two-wheeler and not for the car. Hence, aggrieved over the fixation of negligence and liability, the Insurance Company is before this Court.

3. The owner of the car is the 4th respondent and notice was issued to the 4th respondent but the 4th respondent had chosen not to appear and remained ex-parte.

4. On the above narration of the accident, it is evident that the car is at negligence. But there is no insurance coverage for the car, therefore, the owner of the car is liable to pay the compensation. Since there is no negligence on the part of the two-wheeler, the present Insurance Company which has insurance coverage



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only for the two-wheeler is not liable to pay the compensation.

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5. Hence, this Court is fixing the liability on the owner of the car. Therefore, the 4th respondent herein / the owner of the car is directed to deposit the entire compensation (Rs.21,86,800/-) 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 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. If the Insurance Company had deposited any amount, the Insurance Company is entitled to withdraw the same.

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

27.02.2024

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



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To

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- 1.The Motor Accidents Claims Tribunal,
Additional District Judge (FTC), Theni.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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