



C.M.A(MD)No.872 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.02.2024**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.872 of 2022

and

C.M.P.(MD)No.8281 of 2022

P.K.Ayyoob

... Appellant

Vs

1. Sarammal,

2. Mohamed Raja,

3. Nazima,

4. The Branch Manager,
New India Assurance Co Ltd.,
No.12, Parvathi Plaza,
70 Feet Road,S.B.O.Colony,
Ellis Nagar,
Madurai – 10.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the fair and decreetal order dated 09.11.2021 in M.C.O.P.No.333 of 2018 on the file of the Special District Court, Madurai, Motor Vehicle Claim Tribunal, Madurai.



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For Appellant : Mr.S.Pugalendhi
For R4 : Mr.I.Robert Chandrakumar
For R1 to R3 : No appearance

JUDGEMENT

The appellant has preferred this appeal against the award passed by the Tribunal. The appellant is arrayed as 1st respondent is the claim petition and he is the owner of the vehicle. The appellant had remained ex parte before the Tribunal.

2. It is the case of fatal. The brief facts of the case are that the driver while driving the vehicle had hit the electric post and the post fell down on the passerby and he died instantaneously. The Tribunal after perusing the evidence and after hearing the arguments has come to the conclusion that the driver was in a drunken mood. Even in the FIR, it is categorically stated that while driving the vehicle, the driver was in a drunken mood.

3. The owner of the vehicle has not contested the case and remained ex parte. Without contesting the case, the owner of the vehicle



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has preferred this appeal by stating that the police had not taken any evidence and proof for drunk and drive. For the first time, the appellant has taken a plea that the driver has not been tested and there is no proof for drunk and drive. The appellant has deliberately remained ex parte and also failed to prove the same.

4. Moreover, the Tribunal has come to the correct conclusion and directed the Insurance Company to pay the entire award amount and also directed the Insurance Company to collect 50% of the amount from the owner of the vehicle. Even if the contributory negligence is fixed on the driver, the owner of the vehicle is also liable to pay 50% of the same.

5. Therefore, this Court is confirming the order passed by the Tribunal. Accordingly, this Civil Miscellaneous Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

06.02.2024

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



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S.SRIMATHY, J.

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To

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

Order made in
C.M.A(MD)No.872 of 2022

06.02.2024