



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 13.02.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)Nos. 807 to 809 of 2021

and

C.M.P(MD)Nos. 7504 & 7505 & 7506 of 2021

The Branch Manager,
United India Insurance Company Limited,
Door No.2, Bhuvaneshwari Complex,
Dr.Sankaran Road,
Namakkal, Namakkal District.

... Appellant in all the
Appeals

Vs.

1. Pothumponnu
2. Minor.A.Solairaj
3. Minor.A.Chellathai
4. Srinivasa Perumal
5. Lakshmi
6. Thiyagarajan

... Respondents in
C.M.A(MD)No.807 of 2021

[Minor 2 & 3 claimants are represented through their mother/1st respondent]

1. S.Srinivasan
2. Thiyagarajan

... Respondents in
C.M.A(MD)No.808 of 2021

1. M.Sevugan
2. Thiyagarajan

... Respondents in
C.M.A(MD)No.809 of 2021



COMMON PRAYER: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, to set aside the Judgment and Decree, dated 21.01.2021 in M.C.O.P.Nos.171 of 2017, 12 and 118 of 2018 on the file of the Motor Accident Claims Tribunal/Additional District Court, Virudhunagar.

In C.M.A(MD)No.807 of 2021

For Appellant : M/s.I.Suthakaran
For R-1 to R-5 : M/s.M.Benazir Begum, for
Mr.K.Srinivasa Ragavan
For R-6 : Non appearance

In C.M.A(MD)No.808 of 2021

For Appellant : M/s.I.Suthakaran
For R-1 to R-5 : M/s.M.Benazir Begum, for
Mr.K.Srinivasa Ragavan
For R-6 : Non appearance

In C.M.A(MD)No.808 of 2021

For Appellant : M/s.I.Suthakaran
For R-1 : M/s.M.Benazir Begum, for
Mr.K.Srinivasa Ragavan
For R-2 : Non appearance

COMMON JUDGEMENT

The Insurance Company has preferred these Appeals to set aside the Judgment and Decree, dated 21.01.2021 in M.C.O.P.Nos.171 of 2017, 12 and 118 of 2018 on the file of the Motor Accident Claims Tribunal/Additional District Court, Virudhunagar.



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2. It is a case of fatal. In the said accident two persons were injured and one was fatal. It is seen that three persons had travelled in the two wheeler, which is violation of policy in Traffic Rules. The nature of the accident also indicates that the lorry was plying on the left side of the road, which is as per Traffic Rules. Therefore, the Insurance Company prayed that contributory negligence ought to be fixed on the deceased. However, the Learned counsel appearing for the respondents submitted that simply three persons driving is not an offence to fix contributory negligence.

3. He also relied on the Judgment passed by this Court, dated 05.11.2020 in C.M.A(MD)No.3649 of 2019. The relevant portion is extracted here under:

....

“10. Recently the Hon’ble Supreme Court, in the case of Mohammed Siddique and another /vs/ National Insurance Company Ltd., and others, reported in 2020(1) TN MAC 161 has held as follows:

....

13. The fact that the deceased was riding on a motorcycle along with the driver and another, may not, by itself, without anything more, make him guilty of Contributory Negligence. At the most it would make him guilty of being a party to the violation of the law. Section



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128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeled motorcycle, not to carry more than one person on the motorcycle. Section 194-C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for Motorcycle Drivers and Pillion Riders. Therefore, the fact that a person was a pillion rider on a motorcycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked.

In the above circumstances, the finding of the Tribunal regarding Contributory negligence is not sustainable. Hence, it is liable to be set aside.”



4. Following the same, this Court is not inclined to interfere with the award of compensation passed by the Tribunal.

5. Accordingly, these Civil Miscellaneous Appeals are dismissed. The award passed in the Judgment and Decree, dated 21.01.2021 in M.C.O.P.Nos.171 of 2017, 12 and 118 of 2018 on the file of the Motor Accident Claims Tribunal/Additional District Court, Virudhunagar, are hereby confirmed. No Costs. Consequently, connected miscellaneous petitions are closed.

13.02.2024

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

To

1. The Motor Accident Claims Tribunal/
Additional District Court,
Virudhunagar.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

**Common Judgment made in
C.M.A(MD)Nos. 807 to
809 of 2021**

13.02.2024