



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 10.07.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.1327 of 2015

The Manager,
National Insurance Company Limited,
Branch Office No.2, Jerome Building,
1st Floor, Fort Station Road, Trichy.

... Appellant

Vs.

1. Chitra
 2. Minor Sasikumar
 3. Minor Ravikumar
 4. Nallammal
 5. Minor Maheswari
 6. G.Karuppannan
 7. R. Muniappan
- [Minors 2, 3 & 5 are represented through their mother and natural guardian Chitra/1st respondent herein.]*

...Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed by the Motor Accident Claims Tribunal, Principal District Court, Karur, in M.C.O.P.No.566 of 2007 dated 03.01.2014.

For Appellant : M/s.D.Sivaraman

For Respondents : Mr.K. Suresh Kumar, for R-1 to R-5

R6 & R-7 : No appearance

**JUDGEMENT**

WEB COPY

The present Civil Miscellaneous Appeal is filed by the Insurance Company to set aside the Judgment and Decree passed by the Motor Accident Claims Tribunal, Principal District Court, Karur, in M.C.O.P.No.566 of 2007 dated 03.01.2014.

2. It is a case of fatal. The nature of accident is that the deceased and two other persons had travelled in the two-wheeler as triples and the driver of the two-wheeler was riding the vehicle in rash and negligent manner and all the three persons fell down. The two-wheeler had not hit any other vehicle especially the alleged lorry. The driver of the lorry has stopped the vehicle after seeing the rash and negligent driving in order to observe the accident. Further the two-wheeler had violated the rules by travelling triples, hence the Insurance Company is not liable to pay any compensation.

3. The primary contention of the Insurance Company is that the lorry was not involved in the accident at all. But it is seen that the First Information Report has stated that the lorry was involved in the accident. And there is no contra evidence to prove that the lorry was not involved, therefore this contention of the Insurance Company is rejected.



4. The next contention of the appellant is that P.W.1 has stated that three persons had travelled in the two-wheeler. This fact is not denied by the claimants. This Court is of the considered opinion that the deceased ought not to have travelled in the vehicle with three persons since triples travelling in two-wheeler is not permitted. If travelled then contributory negligence ought to be fasten on the driver of the two-wheeler and also persons travelled in the two-wheeler as triples. Therefore, this Court is of the considered opinion that the entire liability cannot be fasten on the insurance company. The Insurance Company and the owner of the two-wheeler and the lorry are liable to pay compensation.

5. It is seen that the Tribunal had fixed the compensation as 7,69,000/-. The owner of the lorry namely Karuppannan and the Insurance Company are directed to pay Rs.5,38,300/- as compensation and the owner of the vehicle of TVS Victor was directed to pay Rs.2,30,700/-. If contributory negligence is fixed on the driver of the two-wheeler and the deceased, then some amount ought to be deducted. Therefore, this Court is deducting Rs.50,000/- from the total compensation award for contributory negligence and the respondents are liable to pay only Rs.7,19,000/-



6. Therefore, the Insurance Company is directed to deposit a sum of Rs.2,59,500/- (50% of Rs.5,19,000/-) and the owner of the lorry Karuppannan is directed to deposit a sum of Rs.2,59,500/- (50% of Rs.5,19,000/-). And the owner of TVS Victor is directed to pay Rs.2,00,000/-. All the three persons are directed to deposit within a period of 12 weeks from the date of receipt of a copy of the Order along with interest of 7.5% per annum. Since the Insurance Company has already deposited 70% of the award amount granted by the Tribunal, they are entitled to withdraw the excess amount, as per Law. On such deposit, the claimants 1 & 4 are entitled to withdraw their share as apportionment fixed by the Tribunal. The share of the minor claimants shall be deposited in anyone of the Nationalized bank till they attain majority. The 1st claimant/mother is permitted to withdraw the interest amount of the deposited amount of the minor claimants. No Costs.

7. With these directions, this Civil Miscellaneous Appeal is partly allowed. No Costs.

10.07.2024

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



WEB COPY

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



WEB COPY



6

S.SRIMATHY, J.

KSA

**Order made in
C.M.A(MD)No.1327 of 2015**

10.07.2024