



C.M.A(MD)No.1013 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.07.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1013 of 2018
and
C.M.P(MD)No.10577 of 2018

United India Insurance Company Ltd.,
Through its Branch Manager,
3/E, Balavinayakar Kovil Street,
Thoothukudi.

... Appellant/2nd Respondent

Vs.

1.Jasmine Suganthia

2.Arunkumar

... Respondents/Petitioners 1&2

3.M/s.Hari & Co.,
133, Great Cotton Road,
Thoothukudi.

... Respondent/1st Respondent

4.S.Senthilnathan

... Respondent/3rd Respondent

5.Reliance Insurance Company Ltd.,
Through its Policy Serving Office,
No.10-4-4, Thana 2nd Floor,
South Bypass Road,
Vannarpet, Tirunelveli.

... Respondent/4th Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the fair and decreetal order passed by the



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learned Motor Accidents Claims Tribunal / III Additional District Judge, Tirunelveli in M.C.O.P.No.316 of 2008, dated 28.03.2018 as against the appellant.

For Appellant : Mr.N.Dilip Kumar

For R1-R4 : No Appearance

For R5 : Mr.V.Sakthivel

JUDGMENT

The present appeal has been filed by the insurance company challenging the award passed in M.C.O.P.No.316 of 2008 on the file of Motor Accidents Claims Tribunal / III Additional District Court, Tirunelveli primarily on the ground of negligence.

2. A family consisting of parents and 2 children have travelled in a TATA Sumo car on 30.08.2007. A lorry owned by the 1st respondent and insured with the 2nd respondent had come from the opposite direction and dashed against the TATA Sumo, in which the father and mother have passed away. One of the son had sustained injuries and the driver of the TATA Sumo had also passed away. M.C.O.P.No.316 of 2008 was filed by the children seeking compensation for the death of their father. M.C.O.P.No.1699 of 2007 was filed by the children seeking compensation for the death of their mother. M.C.O.P.No.1698 of 2007



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was filed by the son seeking compensation for the injuries sustained by him. M.C.O.P.No.125 of 2009 was filed by the legal heirs of the deceased driver of TATA Sumo. A common order was passed in M.C.O.P.Nos.1698 & 1699 of 2007 and 125 of 2009, wherein the tribunal has fixed the entire liability upon the driver of the lorry and in turn, the appellant insurance company. Challenging those awards, the insurance company has filed C.M.A(MD)Nos.367 & 368 of 2010 and 678 of 2011 before this Court. The Hon'ble Division Bench by its judgment and decree, dated 21.11.2017 had apportioned the liability between the driver of the lorry and TATA Sumo in the ratio of 60:40 and has partly allowed those appeals.

3. The present appeal in C.M.A(MD)No.1013 of 2018 has been filed by the insurance company challenging the award passed in M.C.O.P.No.316 of 2008, wherein the entire liability has been fixed upon the driver of the lorry. In view of the judgment of the Hon'ble Division Bench, dated 21.11.2017, the liability is apportioned between the driver of the lorry and TATA Sumo in the ratio of 60:40.



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4. In view of the above said facts, the appeal is partly allowed mulcting 60% of liability upon the appellant insurance company, namely United India Insurance Company Ltd., and balance 40% liability shall be borne by the 5th respondent herein, namely Reliance Insurance Company Ltd. The quantum as well as the apportionment fixed by the tribunal are hereby confirmed. The 5th respondent insurance company is directed to deposit their 40% of the share within a period of eight (8) weeks from the date of receipt of copy of this order. The award shall carry 7.5% interest from the date of the claim petition. Excess amount, if any deposited by the appellant insurance company, shall be refunded.

5. With the said observations, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

02.07.2024

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

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- To
- 1.The Motor Accidents Claims Tribunal /
III Additional District Judge,
Tirunelveli.
 - 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Order made in
C.M.A(MD)No.1013 of 2018

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