



C.M.A.(MD).No.592 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.592 of 2018

and

C.M.P(MD) Nos.6852 of 2018 and 3060 to 3062 of 2024

M/s. The Oriental Insurance Company Limited,
Through its Divisional Manager,
Door No.3A,
Near Bangur Dharmasala,
West Masi Street,
Madurai.

... Appellant/4th Respondent

-vs-

1. Tmt.Rajasree

2. K.Sundari

3. K.Subitha

...Respondents 1 to 3/
Petitioners 1 to 3

4. Sanjeevi

5. R.Malaiyamansethupatti

6. D.Ramesh

... Respondents 4 to 6/
Respondents 1 to 3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree passed in M.C.O.P.No. 551 of 2014, dated 20.04.2017, on the file of the Motor Accident Claims Tribunal –cum - Special District Court, Madurai.



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For Appellant : Mr.C.Jawahar Ravindran

For R-1 to R-3 : Mr.K.Mahendran

For R-6 : Mr.S.Deenadhalan

For R-4 : No appearance

For R-5 : Died

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the award passed in M.C.O.P.No.551 of 2014, on the file of the Motor Accident Claims Tribunal–cum-Special District Court, Madurai, challenging the apportionment of liability.

2. As per the contentions in the claim petition, the deceased was a pillion rider in a Bullet owned by the first respondent and driven by the second respondent. On 18.09.2013, at about 05.45 p.m., when the Bullet was moving in the east west direction from Melur to Alagar Kovil Road, was driven in a rash and negligent manner and dashed against the another two wheeler, namely, Hero Honda owned by the third respondent insured with the fourth respondent. Therefore, it is stated in the claim petition that the entire negligence was on the part of the rider of the Bullet, in which, the deceased was a pillion rider.



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3. The Insurance Company has filed a counter, contending that when the entire negligence is attributable only on the part of the rider of the Bullet, and no amount of compensation is liable to be paid by them.

4. The Tribunal, after considering the oral and documentary evidence, and also perusing Ex.-X1, Sketch, arrived at a conclusion that both the rider of the Bullet as well as the Hero Honda vehicle were responsible for the accident. The Tribunal has apportioned the liability between the owner of the Bullet and the owner of the Hero Honda at a ratio of 40% : 60%. In other words, 60% of liability is fixed upon the owner of the Hero Honda which in turn is to be paid by the appellant/Insurance Company. The said award is under challenge in the present appeal.

5. The learned counsel appearing for the appellant heavily relied upon Ex.X1- Sketch, to contend that the Bullet was driven in a rash and negligent manner as admitted by the claimants themselves and the accident took place as the bullet went on the wrong side of the road. Therefore, when the entire negligence is attributed to the driver of the Bullet and the Tribunal was not right in apportioning 60% of the liability upon the rider of the Hero Honda and in turn, the liability upon the Insurance Company.



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6. Per contra, the learned counsel appearing for the respondents 1 to 3/ claimants has contended that there is a turn in the Melur to Alagarkovil main Road and therefore, the rider of the Hero Honda has also equally contributed for the accident. Hence, he prayed for sustaining the order passed by the Tribunal.

7. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. The primary contention of the learned counsel appearing for the appellant is that no liability should have been apportioned upon the rider of the Hero Honda, in turn upon the appellant/Insurance Company. On perusal of Ex.X1- Sketch, it is clear that the rider of the Bullet as well as the rider of the Hero Honda have equally contributed for the accident. In such circumstances, this Court is of the considered opinion that the liability must be apportioned to both the riders at 50% and 50%.

9. In view of the above said discussions, the award of the Tribunal mulcting 60% of liability upon the appellant/Insurance Company is hereby set



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aside and it is fixed at 50%. Therefore, the appellant/ Insurance Company is directed to deposit 50% of the award amount along with accrued interest and costs. In case, if any excess amount has been deposited by the Insurance Company, the same shall be refunded along with accrued interest. Considering the fact that the respondents 2 and 3 have attained majority all the claimants are entitled to withdraw the amount. The balance 50% of liability is fixed upon the 1st respondent in the claim petition, who are the owner of the Bullet. On such deposit, the claimants are entitled to withdraw the same in accordance with their respective shares decided by the Tribunal.

10. Accordingly, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. In other respects, the award of the Tribunal stands confirmed. There shall be no order as to costs. In view of the disposal of the appeal, C.M.P(MD) Nos.6852 of 2018 and 3060 to 3062 of 2024 stand closed.

20.06.2024

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



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1. The Motor Accident Claims Tribunal
– cum - Special District Court,
Madurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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