



*C.M.A(MD)No.1262 of 2017*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.07.2024**

CORAM

**THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR**

**C.M.A(MD)No.1262 of 2017**

**and**

**C.M.P(MD)No.12139 of 2017**

The Branch Manager,  
The United India Insurance Company Limited,  
Xavier Buildings, 2nd Floor,  
P.W.D. Road,  
Nagercoil.

... Appellant/3rd Respondent

Vs.

1.N.Vijayakumar

... 1st Respondent/Petitioner

2.Madhan

... 2nd Respondent/1st Respondent

3.Sivakumar

... 3rd Respondent/2nd Respondent

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the order passed by the learned Motor Accident Claims Tribunal / Chief Judicial Magistrate, Nagercoil in M.C.O.P.No.150 of 2013, dated 16.08.2017 as against the appellant and allow the appeal.

For Appellant : Mr.N.Dilip Kumar



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For Respondents : No appearance

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### **JUDGMENT**

The instant appeal has been filed by the Insurance Company challenging the award passed in M.C.O.P.No.150 of 2013 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Nagercoil, primarily, on the ground of negligence.

2. According to the injured claimant, while he was riding a two wheeler, another two wheeler driven by the first respondent and owned by the second respondent came from the opposite direction in a rash and negligent manner and dashed against the two wheeler driven by the claimant. Due to the said impact, the claimant has sustained grievous injuries. Hence, he prayed for compensation of Rs.15,00,000/-.

3. The insurer of the vehicle, in which, the claimant had travelled, had filed a counter contending that when the allegation of negligence is on the part of the vehicle driven by the first respondent, they are not liable to pay any compensation.



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4. The Tribunal, after considering the oral and documentary evidence, has arrived at a specific finding in Paragraph No.9, that the accident has taken place only due to the rash and negligent driving on the part of the first respondent. Admittedly, the first respondent vehicle has not been insured. The third respondent in the claim petition, namely, the appellant/Insurance Company is the insurer of the vehicle, in which, the injured claimant had travelled. The Tribunal relying upon premium paid towards Personal Accident Coverage has mulcted the liability upon the appellant/Insurance Company and directed the Company to pay a compensation of Rs.2,20,000/- . Challenging the said award, the present appeal has been filed by the Insurance Company.

5. According to the learned Counsel appearing for the appellant, when the Tribunal has arrived at a specific finding that, the entire negligence is on the part of the respondents 1 and 2, the Tribunal ought not to have mulcted the liability upon the appellant/Insurance Company, on the basis of Personal Accident Coverage. Hence, he prayed for exonerating the Insurance Company.



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6. Though the claimants have been served, the vakalath filed by the Counsel in this Court has been returned and they have not chosen to represent the said vakalath. The names of the claimants are being printed in the cause-list and there is no representation on their side. Therefore, this Court proceeds to pass orders on merits on the basis of the submissions made by the learned Counsel appearing for the appellant Insurance Company.

7. As could be seen from the award of the Tribunal, the Tribunal has arrived at a specific finding in paragraph No.9 of the award that, the accident has taken place only due to the rash and negligent driving on the part of the first respondent vehicle. The said vehicle is not an insured vehicle. The appellant Insurance Company is the insurer of the vehicle, in which, the injured claimant had travelled. Based upon the personal accident coverage in the policy, the Tribunal has chosen to direct the appellant Insurance Company to satisfy the entire award of Rs.2,20,000/-. It is clear that when negligence is on the part of the vehicle belonging to the first respondent, the appellant Insurance Company, who are noway connected with the said vehicle cannot be directed to pay the compensation.



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**8.** In view of the above said deliberations, the award of the Tribunal as against the appellant Insurance Company is hereby set aside and the liability is fastened upon the third respondent in the appeal / second respondent in the claim petition, who is the owner of the other vehicle.

**9.** The appeal stands partly allowed exonerating the appellant Insurance Company and shifting the liability upon the second respondent in the claim petition. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

**08.07.2024**

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

To

- 1.The Motor Accident Claims Tribunal /  
Chief Judicial Magistrate,  
Nagercoil.
- 2.The Section Officer,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**R.VIJAYAKUMAR, J.**

BTR

**Judgment made in**  
**C.M.A(MD)No.1262 of 2017**

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