



C.M.A.No.1612 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1612 of 2021
and C.M.P.No.8499 of 2021

National Insurance Company Ltd.,
No.122/165, Nethaji Road,
Cuddalore.

...Appellant

Vs.

1.T.Basheer Ahamad
2.Hajeera Banu
3.R.Velmurugan
4.K.Sridhar

5.Reliance General Insurance Co. Ltd.,
No.12, H-2035, 15th Main Road,
Anna Nagar West, Chennai – 600 040.

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 18.02.2021 made in



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M.C.O.P.No.1493 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.2/Additional In charge/Court of Small Causes), Chennai.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.B.Manivannan for R1 & R2
R3 and R4 – No appearance
Mrs.C.Bhuvana Sundari for R5

J U D G M E N T

This appeal is filed by the appellant challenging the award dated 18.02.2021 made in M.C.O.P.No.1493 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.2/Additional In charge/Court of Small Causes), Chennai.

2.The present appeal is filed by the appellant against the fixation of more contributory negligence on the part of the appellant Insurance Company.



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3.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

4.The petitioners are the claimants, the first respondent is the owner of the goods tanker lorry, the second respondent is the Insurer for the goods tanker lorry, the third respondent is the owner of the two wheeler and the fourth respondent is the Insurer for the two wheeler.

5.The brief facts of the case are as follows:

According to the petitioners, on 12.05.2015, the deceased was travelling as a pillion rider in a Hero two wheeler bearing Registration No.TN 18 R 8560 and the said two wheeler was driven by one Nanda @ Jeevanandam, at that time, the goods tanker lorry bearing Registration No.TN 23 L 2527 owned by the third respondent and insured with the appellant Insurance Company, came in the same direction in a rash and negligent manner had hit the side of the motorcycle and thereby, the petitioner fallen under the rear tyre of the tanker lorry and rear wheel ran over the deceased and he died instantly. A case was registered against the driver of the goods tanker lorry in Crime No.196/2015 by E-3, Minjur



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Police Station, Minjur Circle, Thiruvallur District. The petitioners filed a claim petition before the Tribunal in M.C.O.P.No.1493 of 2016, the Tribunal awarded a sum of Rs.16,22,000/- as compensation. Aggrieved by the same, the present appeal has been filed.

6.Learned counsel appearing for the appellant submitted that the Tribunal awarded only 10% contributory negligence on the fifth respondent and directed to recover the same from the fourth respondent/owner of the motorcycle and awarded 90% contributory negligence on the appellant Insurance Company is not sustainable. Accordingly, he prayed for appropriate orders.

7.Per contra, learned counsel appearing for the respondents 1 & 2 submitted that admittedly, the deceased was a pillion rider of the motorcycle owned by the fourth respondent and insured with the fifth respondent. Due to rash and negligent driving by the driver of the third respondent vehicle, the deceased fell under the rear tyre of the tanker lorry and rear wheel ran over the deceased and he died instantly. He



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further submitted that the appeal preferred by the appellant Insurance Company is not sustainable and accordingly, he prayed for dismissal of the appeal.

8.Heard learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 and 2 and perused the materials available on record.

9.The accident and the manner in which the accident happened are not disputed. This appeal has been filed against the fixation of more contributory negligence on the part of the appellant Insurance Company.

10.Before the Tribunal, the first petitioner was examined as PW1, Mr.Senthil, an eye witness to the accident was examined as PW2 and on the side of the petitioners, 13 documents were marked as Exs.P1 to P13. On the side of the fourth respondent, Ms.Sangeetha, Legal Manager was examined as RW1 and 4 documents were marked as Exs.R1 to R4.



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11. On perusal of the records, it is seen that the case was registered against the driver of the goods tanker lorry in Crime No.196/2015 by E-3, Minjur Police Station, Minjur Circle, Thiruvallur District.

12. The appellant Insurance Company has failed to disprove the evidence of PW2, who was an eyewitness to the accident or no independent witness was examined to prove and substantiate its case. Therefore, this Court does not find any grounds to interfere with the award passed by the Tribunal. The compensation awarded by the Tribunal is very reasonable and it does not warrant interference of this Court.

13. The judgment and decree dated 18.02.2021 passed by the Motor Accidents Claims Tribunal/Special Sub Court No.2/Additional In charge/Court of Small Causes), Chennai in M.C.O.P.No.1493 of 2016, is confirmed.



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14.The appellant Insurance Company is directed to deposit the compensation awarded by the Tribunal, less the amount already deposited, if not deposited earlier together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remain unaltered.

15.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.01.2025

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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M.DHANDAPANI, J.

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To

- 1.The Motor Accident Claims Tribunal,
(Special Sub Court No.2/
Additional In charge/Court of Small Causes),
Chennai.
- 2.The Section Officer,
VR Section,
High Court of Madras, Chennai – 600 104.

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