



C.M.A.No.2067 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 25.02.2025

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

**C.M.A.No.2067 of 2024
and
C.M.P.No.15826 of 2024**

The Branch Manager,
M/s.Future Generali India Insurance Co. Ltd.,
3rd Floor, Aadhisri Tower,
D.No.204, D.B.Road, R.S.Puram,
Coimbatore - 641 002.

... Appellant

-Vs-

1. Meena
2. Minor Bavva
3. Minor Anushka
4. Murugan
5. C.Perumal

... Respondents

(Respondents 2 & 3 are minors represented by their
mother / 1st respondent)

PRAYER : Appeal under Section 173 of the Motor Vehicles Act, 1988, against
the judgment and decree dated 21.03.2024 made in M.C.O.P.No.381 of 2022 on
the file of the Motor Accident Claims Tribunal, Special District Court,
Dharmapuri.



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For Appellant : Mr.M.B.Raghavan

For Respondents : Mr.M.Selvam for R1 to R4
No appearance for R5

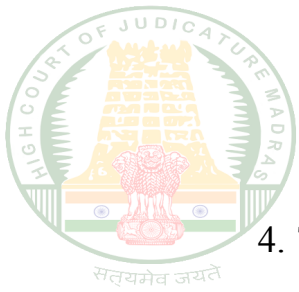
J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This civil miscellaneous appeal has arisen out of the award passed by the Exclusive Motor Accident Claims Tribunal, Dharmapuri dated 21.03.2024 made in M.C.O.P.No.381 of 2022.

2. Due to road accident taken place on 12.01.2022 involving an auto and a two wheeler which was driven by the victim one Nagaraj, the said Nagaraj died, therefore, the legal heirs and dependants of the said Nagaraj deceased joined together and filed the said MCOP seeking a compensation of Rs.50,00,000/- under Section 166 of the Motor Vehicles Act.

3. Before the Tribunal, on behalf of the claimants, P.W.1 and P.W.2 were examined and Exs.P1 to P16 were marked. On behalf of the second respondent / Insurance Company therein, R.W.1 and R.W.2 were examined and Exs.R1 to R4 were marked.



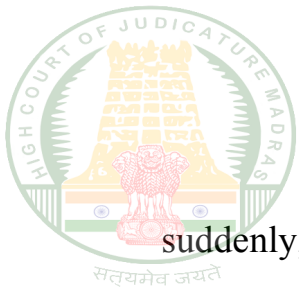
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4. The Tribunal having taken note of the evidence adduced before it has ultimately come to the conclusion that the rash and negligence has to be fixed only on the auto driver as he has suddenly applied the brake, therefore, the following two wheeler ridden by the deceased Nagaraj suddenly hit on the auto, resultantly, he sustained injuries and died immediately.

5. Since the negligence was fixed on the auto driver, the compensation also has to be paid only by the insurer of the auto, i.e., appellant herein, therefore a sum of Rs.27,79,400/- has been fixed as a total compensation under various heads payable by the appellant / Insurance Company to the respondents / claimants by fixing 100% rash and negligence on the part of the auto driver.

6. Only questioning such fixation of 100% made on the auto driver which was insured with the appellant / Insurance Company, this appeal has been filed.

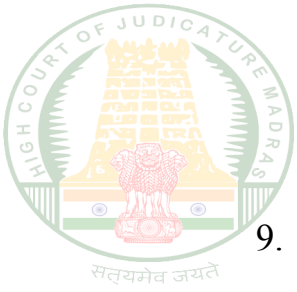
7. This position has been clarified by the learned counsel appearing for the appellant who relied upon the oral evidence adduced by R.W.1 and R.W.2. According to him, R.W.1 is the owner-cum-driver of the auto and R.W.2 is the Investigation Officer of the criminal case. R.W.1 has recorded the evidence stating that he was driving the auto properly and he had not applied the brake



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suddenly, however the two wheeler ridden by the deceased hit on the backside of the auto and thereby the accident had taken place, therefore the negligence cannot be fastened on the auto driver, that is his evidence. In support of his contention, the learned counsel appearing for the appellant has also relied the evidence of R.W.2 who is none other than the Investigation Officer, who has deposed before the trial Court stating that, even though FIR has been filed fixing the rash and negligence and responsibility on the auto driver, subsequently on investigation, they found that, it is the negligence on the part of the rider of the two wheeler, who is none other than the victim and such accident had taken place and therefore, the final report also had been filed closing the investigation to that extent not to proceed further against the auto driver.

8. These are the crucial evidences according to the learned counsel for the appellant and based on which, the the Tribunal should have fixed some responsibility atleast on the rider of the two wheeler who is the deceased and therefore, fixing entire responsibility on the auto driver directing to pay the entire compensation by the insurer of the auto may not be justifiable, hence, the interference sought for, he contended.



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9. On the other hand, Mr.M.Selvam, learned counsel appearing for the respondents / claimants would contend that, insofar as the evidence of P.W.2 who is the eye witness, he has deposed before the trial Court stating that when the two wheeler was following the auto, suddenly the auto driver applied the brake without any signal thereby it has become placed and that could not be averted by the rider of the two wheeler who is none other than the victim, hence he had a direct hit on the backside of the auto, therefore, the entire accident caused only because of the rash and negligent driving on the part of the auto driver. Therefore, there was every justification on the part of the Tribunal to fix the responsibility on the auto driver, thereby the compensation payable to the victim's family have to be paid only by the insurer of the auto and therefore, such findings given by the learned Judge and the award passed by the Tribunal which is impugned herein does not warrant interference, he contended.

10. We have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

11. Insofar as the evidences adduced before the Tribunal is concerned, on the side of the petitioners, P.W.1 and P.W.2 were examined, among the two



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witnesses, P.W.2 one Perumal who deposed before the trial Court as an eye witness of the accident and he had deposed stating that because of the rash and negligent driving or sudden brake applied by the auto driver, this accident had taken place, this was mainly relied upon by the Tribunal to fix the responsibility of rash and negligent only on the auto driver.

12. But at the same time, it is also to be looked into that R.W.1 is the auto driver and the owner of the auto also. Assuming that the auto driver has examined himself as R.W.1, his evidence may not be taken with that much credence and the Tribunal could have given some weightage to the evidence of R.W.2, who is none other than the Investigation Officer who has deposed before the trial Court stating that after investigation they found that it is the rider of the two wheeler who is responsible for the accident. Therefore, the investigation was closed at that time and accordingly, final report under the provisions of Cr.P.C has been filed before the criminal Court and also before the Tribunal.

13. Having taken note of these evidences which were available before the Tribunal, the Tribunal if at all has not fixed the entire responsibility on the rider of the two wheeler who is none other than the victim, atleast some contributory negligence could have been fixed.

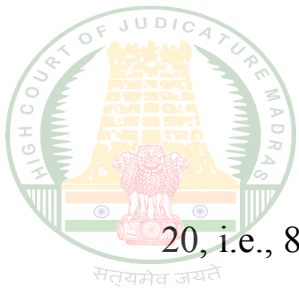


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14. In this context, we must see that the two wheeler which was following the auto could not have directly hit the auto, unless the auto suddenly stopped. When there had been any eventuality for the auto driver which made him to stop suddenly, he could have applied the brake before which some signalling could have been given. However, without any signalling suddenly he had applied the brake, by which the two wheeler which was closely following could have lost control and therefore, he hit the vehicle, resultantly the accident had taken place.

15. However insofar as the rider of the two wheeler is concerned, he could have also been little bit careful in riding the two wheeler closely following the vehicle which was moving before him. However such a caution since has not been taken by him that lead to this kind of fatal accident and thereby the victim has lost his valuable life. Therefore, we feel that, it is a case of the negligence on the part of both, but maximum negligence could be fastened only on the auto driver and at the same time, atleast some negligence could be fastened on the rider of the two wheeler who is the victim. In this context, we having taken note of all these circumstances and evidences have come to the conclusion that such contributory negligence can be fixed at 80 :



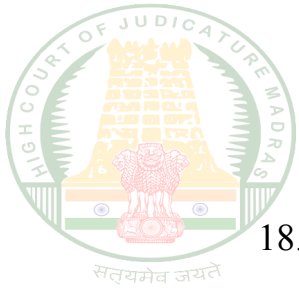
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20, i.e., 80% shall be fixed on the part of the auto driver and 20% shall be fixed

on the rider of the two wheeler who is the victim.

16. When that being the case, since there had been no questioning of quantum fixed by the Tribunal in all respects, the award fixed by the Tribunal i.e., Rs.27,79,400/- shall be approved and 80% can be paid by the appellant / Insurance Company of the auto. The remaining 20% has to be taken as a contributory negligence on the part of the victim, therefore the claimants are entitled to get only 80% of the amount i.e., Rs.27,79,400/- which work out to Rs.22,23,520/-.

17. It is submitted that the full award amount as per the impugned award since has been deposited, out of which, the claimants are entitled to withdraw only Rs.22,23,520/- with corresponding interest (7.5% per annum). The remaining amount, the appellant / Insurance Company is entitled to withdraw. The apportionment will be as per the direction given by the Tribunal through the impugned order with the same ratio.



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18. With this modification of the impugned award, this Civil

WEB C.M.A. Miscellaneous Appeal is allowed in part. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed. .

(R.S.K., J.) (A.D.M.C., J.)
25.02.2025

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

To

1. The Exclusive Motor Accident Claims Tribunal,
Dharmapuri.
2. The Section Officer,
V.R. Section, High Court,
Chennai.



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