

C.M.A.(MD)No.499 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.02.2026

Pronounced on : 02.06.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.499 of 2020

The Bajaj Allianz General Insurance Company Limited,
Representing Through The General Manager,
GE Plaza, Airport Road,
Yerwada,
Pune – 411 899.

... Appellant/2nd Respondent

Vs.

1.Alagumuthuraja,
S/o.M.Pandian,
D.No.16.1/141A, Koligipatti Village,
Oruthattu Post, Nilakottai Taluk,
Dindigul District.

... 1st Respondent/Petitioner

2.Delhi Gujrat Fleet Carrier Private Limited,
1/43, Shivaji Nagar,
Gurgaon - 122 001.

... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 to set aside the judgment and decree made in M.C.O.P.No.489 of 2017, dated 20.12.2019 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Dindigul and allow the appeal with costs.



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For Appellant : Mr.J.S.Murali
For R1 : Mr.R.Narayanan
For R2 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the Award, dated 20.12.2019 passed in M.C.O.P.No.489 of 2017 by the Motor Accident Claims Tribunal/Special Subordinate Court, Dindigul.

2.The second respondent in M.C.O.P.No.489 of 2017 is the appellant herein. The petitioner/claimant is the first respondent herein, who filed the claim petition. The first respondent in the claim petition is the second respondent herein.

3.For the sake of convenience, the parties as arrayed in M.C.O.P.No.489 of 2017 are adopted hereunder.

4.The brief facts of the case:

On 31.05.2015 at about 11.30 a.m., the petitioner Alagumuthuraja was riding as a pillion rider in a two wheeler bearing registration No.TN 59 AU 9920. The two wheeler was ridden by his friend Dhamodaran along the Madurai to Dindigul NH 7 main road and while he was proceeding near

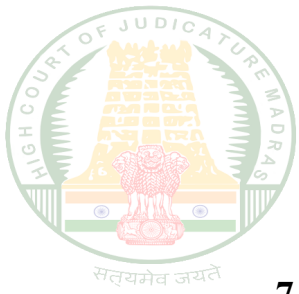


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Tollgate, he dashed behind a parked container lorry bearing registration No.HR 55 N 7851 belonging to the first respondent. The first respondent's lorry was parked in the service road in the area meant for road traffic. Due to the impact, the rider died and the petitioner sustained fractures in his jaw and in his left wrist and also multiple injuries all over the body. The petitioner was treated in a private hospital from 31.05.2015 to 07.06.2015. The accident took place due to negligence on the part of the driver of the first respondent's lorry. The first respondent's lorry was insured with the second respondent. Hence, the petitioner filed a claim petition seeking compensation of Rs.20,00,000/- for the injuries sustained by him.

5.The first respondent remained ex-parte.

6.The 2nd respondent/Insurance Company objected that the accident had taken place due to the negligent act of the rider of the two wheeler. The FIR was registered against the rider of the two wheeler and not against the driver of the lorry. The rider of the two wheeler was riding in a rash and negligent manner and dashed behind the parked lorry during the daytime. There is no negligence on the part of the driver of the lorry. Hence, the second respondent is not liable to pay any compensation.



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7. Before the Tribunal, both sides adduced oral and documentary evidence. The petitioners examined two witnesses as P.W.1 and P.W.2 and marked 15 documents as Ex.P.1 to Ex.P.15. On the second respondent's side, two witnesses were examined as R.W.1 & R.W.2 and Ex.R.1 was marked and also Ex.X.1 to Ex.X.3 were marked.

8. After hearing both sides and after considering the evidence, the Tribunal has held negligence on both the driver of the lorry and the rider of the two wheeler and fixed the negligence at 40% + 60%, respectively. The Tribunal has arrived at a total compensation of Rs.1,70,730/- and has directed the second respondent to deposit the entire compensation amount within two months with interest and costs.

9. Aggrieved by the said award, the second respondent has preferred this Civil Miscellaneous Appeal.

10. The points to be determined are:

(1) Whether the first respondent's lorry driver was not fully responsible for the accident as the rider of two wheeler hit behind a stationed lorry?



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(2)Whether the Tribunal failed to direct the owner/Insurance Company of two wheeler to pay compensation at 60% contributory negligence fixed by it?

11.Heard both sides and perused the records in this Civil Miscellaneous Appeal.

12.It is the main contention of the counsel for the appellant/ 2nd respondent Insurance Company is that after proper appreciation of evidences, the Tribunal has correctly fixed contributory negligence of 40% on the part of the driver of the lorry and 60% on the part of the rider of the two wheeler as rightly concluded in its order. However, while directing the payment of compensation, the Tribunal has directed the 2nd respondent/ Insurance Company to deposit the entire compensation with interest and cost. The petitioner failed to add the owner and insurer of the two wheeler and the same was not considered by the Tribunal. The order of the Tribunal is against law.

13.The learned counsel for the claim petitioner/1st respondent herein, has contended that the driver of the lorry parked the lorry in two wheeler area



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without any signal. The petitioner/claimant was a pillion rider and the rider of the two wheeler died. Hence, the Tribunal has directed the first respondent's lorry insurer to pay the entire compensation.

14.In reply, the learned counsel for the appellant/2nd respondent Insurance Company has submitted that the FIR was registered against the rider of the two wheeler, who dashed behind the stationed lorry and there is no composite negligence. Moreover, the petitioner/claimant himself gave the FIR. However, the 2nd respondent/Insurance Company has agreed to pay 40% of compensation.

15.On perusal of the records and on hearing argument of both sides, it is clear that the accident took place during the day time, the rider of two wheeler dashed against the parked lorry and died on the spot. This fact shows that the rider of two wheeler came at high speed in negligent manner. The FIR was also registered against the rider of the two wheeler. Therefore, the Tribunal after considering the FIR and also the evidence adduced by both sides correctly fixed the negligence at 40% on the driver of lorry and 60% on rider of two wheeler in its order. Therefore, this Court is of the considered view that the negligence concluded by the Tribunal is sustainable and there is no need to interfere in it. But, the Tribunal without



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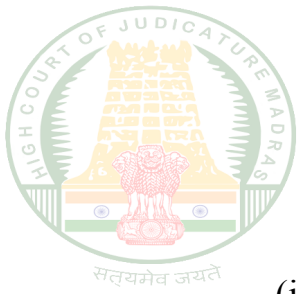
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any reason has directed the second respondent to pay the entire compensation. Admittedly, the petitioner has not added the owner and insurer of the two wheeler. During the course of the arguments, both sides consented to the contributory negligence as held by the Tribunal. There is no dispute with regard to the compensation arrived at by the Tribunal. Therefore, the compensation awarded by the Tribunal need not be interfered with. Hence, this Court is of the view that the Tribunal has erred in directing the appellant/2nd respondent Insurance Company to deposit the entire awarded amount instead of 40% amount, to that effect the order of the Tribunal has to be set aside and this Civil Miscellaneous Appeal has to be allowed. The points are answered accordingly.

16.In the result,

(i)The Civil Miscellaneous Appeal is allowed and the award dated 20.12.2019 passed in M.C.O.P.No.489 of 2017 by the Motor Accident Claims Tribunal/Special Subordinate Court, Dindigul, is modified.

(ii)The petitioner/claimant is entitled to 40% compensation from the 2nd respondent/Insurance Company and to that effect, the 2nd respondent/Insurance Company is directed to pay 40% of the compensation awarded by the Tribunal in MCOP.No.489 of 2017 to the petitioner with proportionate interest and costs.



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(iii) If the entire amount is deposited by the appellant/Insurance Company in this case either before the Tribunal or before this Court, the 60% of the same with proportionate interest shall be ordered to be withdrawn by the appellant/Insurance Company on appropriate application.

02.06.2026

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

To

1. The Motor Accident Claims Tribunal/
Special Subordinate Court,
Dindigul.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
C.M.A.(MD)No.499 of 2020

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