



C.M.A.Nos.1758 to 1762 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 19.12.2022

Delivered On : 02.02.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR

AND

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.Nos.1758 to 1762 of 2017

and

C.M.P.Nos.9486 to 9490 of 2017

C.M.A.No.1758 of 2017

M/s. New India Assuarance Co. Ltd.,
Branch Office,
No.147, Salai Road,
High Sports Buildings,
Ramanathapuram Post,
Ramanathapuram District.

... Appellant/Respondent-III

Vs.

1.T.Premkumar
2.R.Duraimurugan (Lorry Driver)
3.M.Mohanraj
4.M/s.Bajaj Allianz General Ins. Co. Ltd.,
Branch Office,
No.11, Peoples Park, 3rd Floor,
Government Arts College Road,
Coimbatore District – 641 018.

... Respondent-I/Petitioner-I

... Respondent-II/Respondent-I

... Respondent-III/Respondent-II

... Respondent-IV/Respondent-IV



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Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in M.C.O.P.No.486 of 2010 on 06.04.2016 on the file of the learned Motor Accident Claims Tribunal (3rd Additional District Judge) of Dharapuram at Tiruppur.

For Appellant	:	Mr.J.Chandran
For R1 to R3	:	Mr.Ma.P.Thangavel
For R4	:	Mrs.Srividhya

COMMON JUDGMENT

SATHI KUMAR SUKUMAR KURUP, J.

The challenge in all these appeals is to the award of the learned III Additional District Judge, Motor Accident Claims Tribunal, Dharapuram at Tiruppur District in M.C.O.P. Nos.486, 488, 490, 492 & 494 of 2010 awarding compensation to the claimants who are either injured or dependants of victims of accident arising out of the same accident.

2.Brief facts that are necessary for the disposal of these appeals are as follows:

2.1.On 12.04.2010 at about 2.45 p.m., members of a joint family was



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travelling in a car. The car was driven by one Manoharan. When the car was proceeding towards West in the Karur to Coimbatore main road, a lorry belongs to second respondent in the claim petitions and driven by the first respondent in the claim petitions and insured by the appellant dashed against the car. The driver of the car by name Manoharan and three persons by name Tmt.Buvaneswari, Bharathi and Kalaivani died on the spot. Another passenger by name Dhivya also died in hospital. All the claim petitions are allowed by awarding compensation, fixing the liability jointly and severally against Driver, Owner and the insurer of lorry after holding that the accident was caused due to the rash and negligent driving of the lorry. All the appeals are filed by the third respondent/insurer of the lorry mainly against the liability on the ground that the accident was due to the rash and negligent driving of car by name Manoharan.

3.The learned Counsel for the Appellant/Insurer of the Lorry bearing Registration No.TN-45-X-8595, submitted the following points: The FIR under Ex.P-1 was lodged by the Village Administrative Officer of Veeranapalayam, Karur District. He was not an eye witness. He is a



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hearsay witness. Only to set the criminal law in motion, he had lodged the FIR. The Investigation Officer had closed the investigation stating that the driver of the car bearing Registration No.TN-43-C-5618 died in the accident. Therefore, the charges abated. The person who had let in evidence as eye witness was not at all an eye witness. The learned Judge of the Tribunal had misdirected himself by arriving at a conclusion that the accident was caused by the driver of the lorry and fixed the entire liability on the insurer of the Lorry/Appellant herein. R.W-1 is the Inspector of Police, Kangeyam Police Station. R.W-2 is the Legal Officer of the Bajaj Allianz Insurance Company/the fourth Respondent herein. Ex.R-1 is the Closure Report/Charge Sheet. Ex.R-2 is the rough sketch prepared by the Investigation Officer.

4.The eye witness one Ramalingam, S/o.Periyasamy, aged about 45 years, a resident of Veeracholapuram Village, Kangeyam Taluk, Tiruppur District was examined as P.W-5. As per his affidavit filed as Examination-in-Chief, he had stated that the accident occurred on 12.04.2010 by around 2.45 p.m. He was returning from Karur and was standing in front of the



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shop which is hardly 100 metres away from the scene of occurrence. As per his affidavit recorded as Examination-in-Chief of P.W-5, the car bearing Registration No.TN-43-C-5618 was moving from East to West on the East-West Karur to Veeranampalayam Road. On the Southern portion of the East-West Road towards West from East, a lorry bearing Registration No.TN-45-X-8595 was moving from West towards East with high speed. On seeing the lorry, the driver of the car slowed down the car and moved the car to the Southern extreme of the East-West Road. The driver of the lorry did not reduce the speed and hit against the car thereby the front portion of the car was fully damaged. In the impact, the car was pushed towards Northern side of the East-West Road. The impact was on the right side of the lorry. He was cross-examined on behalf of the Appellant herein/third Respondent and fourth Respondent in the claim petition. The suggestion was that he was not related to the victims of the accident. He had not noticed the damage of the lorry. Therefore, he was not an eye witness. The said suggestion by the Insurance Company of the lorry and the Insurer of the Car were denied by him. He admitted that he was not related to the victims. He denied the suggestion that he was not an eye witness.



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5.The only person competent to speak about the accident was the driver of the lorry bearing Registration No.TN-45-X-8595 could have been summoned by the Appellant herein/third Respondent in the claim petition but he was not summoned and examined. The competent person who was available in the scene of occurrence was not at all examined as witness on behalf of the third Respondent/Appellant herein. Therefore, the Tribunal can draw adverse inference from the conduct of the third Respondent Insurance Company. Only witness available before the Tribunal was P.W-5 who was the natural witness and who is the person available in the vicinity of the place of occurrence/scene of occurrence. To buttress the same, the Motor Vehicle Inspector's report is available before the Tribunal. Ex.P-4 is the Motor Vehicle Inspector's report on the lorry bearing Registration No.TN-45-X-8595 wherein it is stated as follows:

“Front Right side windscreen glass damaged, front grill, pumber, Radiator damaged, front right side headlight damaged, front right side spring leaf damaged, chassis bend, axle bend, Front right side cabin dented, fuel tank dented.”

6.The Motor Vehicle Inspector's report on the car bearing Registration



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No.TN-43-C-5618 was marked as Ex.P-5 wherein it is stated as follows:

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“Front windscreen glass damaged, front pumber, headlights, radiator, fan leaf damaged, front both side door completely damaged, rear both side body damaged, front top of the roof damaged, steering assembly dislocated, Chassis Bend.”

7.Further, the sketch prepared by the Investigation Officer under Ex.R-2 shows the impact on the Northern part of the East-West running Kangeyam-Karur Road. When the car was proceeding from East to West the impact of the collision on the right side of the lorry which is moving on the opposite direction from West towards East and in the impact the lorry went to the extreme North pushing the car along with the lorry to the extreme North side of the East-West Road indicates that the negligence of the driver of the lorry had caused the accident.

8.The argument of the learned Counsel for the Appellant that the learned trial Judge believed the version of the eye witness P.W-5 who was not at all the original eye witness and the statement of the Village Administrative Officer who had lodged the FIR who was also not an eye witness and arrived at a conclusion that the accident was caused by the



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negligence of the lorry driver had fixed the liability on the insurer of the lorry/Appellant herein who was the third Respondent in the claim petition cannot at all be accepted. It is found unacceptable in the above circumstances. The Motor Vehicle Inspector's report gives the indication that the right side of the lorry had contacted the car and pushed the car to the extreme side of the Northern part of the East-West Road. The Observation Mahazar marked on the side of the claimants under Ex.P-3 prepared by the very same Investigation Officer reads as under:

“மேற்படி வழக்கின் சம்பவ இடமானது காங்கயம் காவல் நிலையத்தில் இருந்து சுமார் 3 கி.மீ. கிழக்கே காங்கயம் to கர்நூர் செல்லும் கிழமேல் ரோட்டில், வீரணம்பாளையம் பிரிவுக்கு ... மேபுறமாக ரோட்டில் வடபுறத்தில் காணப்படுகிறது. சம்பவ இடத்தில் இருந்து சுமார் 70 அடி வடகிழக்கே சிக்னல் போர்டும், சுமார் 150 அடி வடகிழக்கே வீரணம்பாளையம் என்ற போர்டும் சுமார் 200 அடி வடகிழக்கே இளங்கோ டீக்கடை தெற்கு பார்த்தவாறும் காணப்படுகிறது. மேற்படி டீக்கடைக்கு எதிரே ரோட்டின் தென்புறம் வீரணம்பாளையம் ரோடு தெற்கு நோக்கி செல்வது காணப்படுகிறது. சம்பவ இடத்தில் இருந்து சுமார் 40 அடி தென்கிழக்கே சிமெண்ட்கல் உடைந்தவாறு காணப்படுகிறது. அதற்கு மேபுறம் சிக்னல் போர்டு காணப்படுகிறது. மேற்படி காங்கயம் to கர்நூர் ரோட்டில் தென்புறமாக கிழக்கிலிருந்து மேற்காக பாதுகாப்புக்காக சிமெண்ட் கற்கள் வரிசையாக காணப்படுகிறது. சம்பவ இடத்தில் கிழக்கு பார்த்தவாறு TN-45-X-8595 என்ற எண்ணுள்ள லாரியும் தென்வடலாக TN-43-C-5618 என்ற எண்ணுள்ள மாருதி ஜென் எஸ்டிலோ காரும் பலத்த சேதமாகிய நிலையில் காணப்படுகிறது. சம்பவ இடத்தில் விபத்துக்குள்ளான



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மேற்படி லாரி மற்றும் காரின் உதிரி பாகங்கள் ஆங்காங்கே சிதறி
கிடைக்கின்றன.”

9.Heard the learned Counsel for the Appellant and the learned
Counsel for the Respondents and perused the materials available on record.

10.In accident cases, the Investigation Officers try to close the
investigation fixing the liability on the driver of the vehicle who died thereby
making it easy for the Investigation Officer to lessen the burden of
investigation. Also from experience, it is found that when there is
involvement of a vehicle, the rider of the vehicle or the driver of the vehicle
will be held liable if there is accident between a pedestrian and a vehicle.
Similarly, if there is accident between a cyclist and a motor vehicle, the
driver or rider of the motor vehicle will be held responsible for the accident.
If the vehicle is a two wheeler and a car, the driver of the car will be held
responsible. If there is collision between a lorry and car the driver of the
lorry will be held responsible. Usually, the bigger vehicle will be held
responsible. In cases where the rider or the driver is killed on the spot, it is
easy for them to close the investigation holding that the driver of the vehicle,



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who died in the accident is responsible for the accident. Therefore, it is not easy for the Tribunal or the Criminal Court to fix the liability only when witnesses appear before the Court or Tribunal. Based on the facts available before the Court or Tribunal, the Court or Tribunal arrives at a just conclusion. Here, there was eye witness available viz., P.W-5 who was subjected to cross-examination. Nothing was elicited from the cross-examination of P.W-5 regarding shifting of the liability on the driver of the car or against the contention of the claimants that the accident occurred due to the negligence of the driver of the lorry. The Motor Vehicle Inspector's report is available to indicate what had taken place. The probable cause of action that the right side of the lorry was the cause of the impact. That is why, the driver of the lorry was not examined by the insurer of the lorry/Appellant herein.

11. In the case of ***Gulam Sarbar -vs- State of Bihar*** reported in ***(2014) 3 SCC 401*** the Hon'ble Supreme Court had observed as follows:

“14. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to



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prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by [Section 134](#) of the Evidence Act. Even in Probate cases, where the law requires the examination of at least one attesting witness, it has been held that production of more witnesses does not carry any weight. Thus, conviction can even be based on the testimony of a sole eye witness, if the same inspires confidence.”

12. In this case, the only eye-witness is examined as P.W-5 and his evidence cannot be ignored. He is not an interested witness and no suggestion was put to the witness doubting his integrity. Therefore, the contention of the learned Counsel for the Appellant regarding shifting the liability on the driver of the car based on the report of the investigation cannot at all be accepted in the light of the facts available before the learned Presiding Officer of the Tribunal. Therefore, the contention of the learned Counsel for the Appellant is rejected.

13. The reported ruling of the Hon'ble Supreme Court in **(2020) 7 SCC**



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256 in the case of *Rajendra singh and Others -v- National Insurance*

Company is with regard to the claim of compensation for the deceased housewife and minor girl for whom the income cannot be calculated. Therefore, notional income was fixed. In the case before this Court, the deceased was 70 years old/senior citizen and notional income was fixed at Rs.5,000/- due to which 1/3rd was deducted and Rs.3335/- was taken as monthly income after deduction which is calculated for a year comes to Rs.40,020/-. There was no addition for future prospects and the multiplier was 5. Therefore, nothing is found to be excessive to accept the claim of the Appellant/Insurance Company. Therefore, the same is rejected and no interference is warranted in dis-lodging the award passed by the learned Motor Accidents Claims Tribunal, Dharapuram.

14.M.C.O.P.No.486 of 2010 is filed by T.Premkumar with regard to the claim over the death of his mother T.Buvaneswari, W/o.Thangavel Pillai.

15.M.C.O.P.No.488 of 2010 is filed, with regard to the claim over the death of M.Kalaivani, W/o.Manoharan, by her mother-in-law and brothers-



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in-law. The deceased M.Kalaivani was serving on the date of the accident as Deputy Block Development Officer and there was proof of income under Ex.P-12 for drawing monthly salary of Rs.25,557/-.

16.M.C.O.P.No.490 of 2010 is filed, with regard to the claim over the death of N.Manoharan S/o. Nagarajan, by his mother and the brothers.

17.M.C.O.P.No.492 of 2010 is filed, with regard to the claim over the death of minor daughter of M.Divya, D/o.Manoharan, aged about 16 years, by her grand-mother and uncles.

18.M.C.O.P.No.494 of 2010 is filed, with regard to the claim over the death of minor daughter of Manoharan and Kalaivani, viz., M.Bharathi, aged about 9 years, by her grand-mother and uncles.

19.M.C.O.P.Nos.492 and 494 of 2010 are with regard to the claim over the death of minor daughters of Manoharan and Kalaivani viz., M.Divya, D/o.Manoharan, aged about 16 years and M.Bharathi, aged about



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9 years. The Tribunal had notionally fixed the income of the deceased children in both the M.C.O.P.Nos.492 and 494 of 2010. It does not warrant interference. Further on perusal of the judgment of the learned Motor Accidents Claims Tribunal in all M.C.O.P.Nos.486, 488, 490, 492 & 494 of 2010, Point For Consideration No.1 regarding fixing the negligence, the learned Presiding Judge of the Motor Accidents Claims Tribunal had in his discussion clearly stated that the Village Administrative Officer of Veeranampalayam Village had on the basis of his interaction with the witnesses available in the place of occurrence had preferred the Complaint fixing the liability on the driver of the lorry to set the criminal law in motion. By lodging the FIR whereas the Investigation Officer who was examined as R.W-1-Inspector of Police, Veeranampalayam Police Station had dropped further investigation fixing the negligence on the deceased driver of the car based on an alleged eye-witness who was a shepherd boy who was rearing sheep near the place of accident.

20.The learned Presiding Judge, Motor Accidents Claims Tribunal, Dharapuram had not accepted the closure report of the Investigation Officer,



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R.W-1 stating that the said eye-witness/shepherd boy was not produced before the learned Motor Accidents Claims Tribunal, Dharapuram.

Therefore, it is rejected by the learned Presiding Judge of the Motor Accidents Claims Tribunal stating that the closure report is a fictitious report whereas the Village Administrative Officer's report is based on the feedback obtained by the Village Administrative Officer. Therefore, the learned Presiding Judge of the Motor Accidents Claims Tribunal had accepted the eye-witness produced by the Petitioners/Claimants before the Court and rejected the closure report of the Investigation Officer in this case/R.W-1. Based on the same, the learned Judge had awarded compensation to the Claimants. This Court can draw adverse inference from the conduct of the Appellant herein as Respondent-3 before the learned Motor Accidents Claims Tribunal, Dharapuram for not choosing the examination of the competent witness, the driver of the lorry bearing Registration No.TN-45-X-8595.

21.This Court or Tribunal can draw adverse inference which is a strong presumption against the driver of the lorry in the light of Motor



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Vehicle Report of the Lorry under Ex.P-4 and Motor Vehicle Report of the

Car Ex.P-5. Therefore, there are sufficient materials available before the

learned Motor Accidents Claims Tribunal to draw adverse inference and

strong presumption against the Appellant herein and therefore, the learned

Tribunal had arrived at a just conclusion on the probabilities of the case. In

the light of the above, the contention of the Appellant herein attempting to

shift the liability on the driver of the car who is the owner-cum-driver and

also it is to be considered that the driver of the car/owner of the car was

driving along with his family consisting of his mother, his wife and two

minor children. In all the probabilities, the person who drives the car along

with his family members viz., mother, wife and two children will be very

cautious in driving his car safely. Under those circumstances, the contention

of the learned Counsel for the Appellant/Insurer of the Lorry that the

accident was caused by the driver of the car cannot be accepted from the

angle of an ordinary prudent man. In those possible circumstances, the

Insurer of the lorry having the right to prove his contention as is available

from the closure report of the Investigation Officer to prove his contention

that the accident was caused by the driver of the car ought to have been



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proved by the evidence of the driver of the lorry bearing Registration No.

TN-45-X-8595. When the Insurer had not chosen to examine his driver of the lorry bearing Registration No.TN-45-X-8595, it gives a strong presumption to the Court or Tribunal that the lorry driver if subjected to cross examination by the learned counsel for the Claimants in MCOP.Nos.486, 488, 490, 492 & 494 of 2010 for which he will be confronted with the facts resulting in the death of the entire family. To avoid such a risk, the Insurer of the lorry avoided to examine the competent witness viz., the driver of the lorry before the learned Motor Accidents Claims Tribunal, Dharapuram. This gives strong presumption against the Insurer of the lorry/Appellant herein who was third Respondent before the Tribunal. The Court or Tribunal can draw adverse inference under Section 114 of Indian Evidence Act from the conduct of the parties before the trial Court and based on the materials available during trial/enquiry. Accordingly, the learned Presiding Judge of the Motor Accidents Claims Tribunal had arrived at a just conclusion that the accident was caused by the driver of the lorry. Therefore, this Court need not interfere with the findings arrived at by the learned Presiding Judge of Motor Accidents Claims Tribunal,



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Dharapuram.

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22.In the light of the above discussion, the appeals do not have merits and hence, rejected. The award passed by the learned Motor Accidents Claims Tribunal in M.C.O.P.Nos.486, 488, 490, 492 & 494 of 2010 are confirmed.

23.In the result, all the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

(S.S.S.R., J.) (S.S.K., J.)
02.02.2023

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Internet : Yes / No
Index : Yes / No



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S.S. SUNDAR, J.

and

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After pronouncing the judgment in the above Civil Miscellaneous Appeals, the learned Counsel appearing for the respondents/claimants submitted that the entire award amount had not been deposited.

2. In view of the above submission, the Appellant/Insurance Company is directed to deposit the entire award amount with interest as awarded by the Tribunal to the credit of M.C.O.P.Nos.486, 488, 490, 492 & 494 of 2010 on the file of the Motor Accidents Claims Tribunal (III Additional District Court), Dharapuram at Tiruppur, within a period of eight weeks from the date of receipt of a copy of this order and on such deposit, the respondents/claimants are at liberty to withdraw the amount.

(S.S.S.R., J.) (S.S.K., J.)
02.02.2023

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S.S. SUNDAR, J.



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and
SATHI KUMAR SUKUMARA KURUP, J.

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To

The III Additional District Judge,
Motor Accident Claims Tribunal,
Dharapuram at Tiruppur.

Common Judgment in
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02.02.2023