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C.M.A.Nos.839 of 2022 and 2625 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH.,J

C.M.A.Nos.839 of 2022 and 2625 of 2023
and CMP.6045 of 2022

The Manager, Oriental Insurance Company Limited,
No.32/312, Vijayalakshmi Complex, 13th street,
Sathuvacherry, Vellore – 9.

Appellant in CMA No.839 of 2022

2nd respondent in CMA No.2625 of 2023
Vs.

1. Sathiya

2.Minor Suresh

. Respondents 1 and 2 in CMA No.839 of 2022
Appellants in CMA No.2625 of 2023

3. Thangavel

3rd respondent in CMA No.839 of 2022
..1st respondent in CMA No.2625 of 2023

4. Elumalai

4th Respondent in CMA No.839 of 2022
..3rd respondent in CMA No.2625 of 2023

PRAYER in CMA No.839 of 2022 : Civil Miscellaneous Appeal
filed under 173 of the Motor Vehicles Act, 1988 against the award

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against the judgement and decree dated 30.09.2021 and made in MACT OP No.1480 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Thiruvannamalai.

PRAYER in CMA No.2625 of 2023 : Civil Miscellaneous Appeal filed under 173 of the Motor Vehicles Act, 1988 to enhance the award against the judgement and decree dated 30.09.2021 and made in MACT OP No.1480 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Thiruvannamalai.

For Appellant : Mr.D.Bhaskaran
in CMA No.839 of 2022
Ms.A.Subadra
in CMA No.2625 of 2023

For Respondent : Mr.M.Malar
and Mr.A.Subadra for
R1 and R2
in CMA No.839 of 2022

Mr.D.Bhaskaran for R2
in CMA No.2625 of 2023

COMMON JUDGMENT

The Insurance company has filed CMA No.839 of 2022, challenging the award passed by the Motor Accident Claims Tribunal, Thiruvannamalai, in MCOP No.1480 of 2017 dated



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30.09.2021, questioning their very liability to pay compensation to the claimants.

2. The claimants have filed CMA No.2625 of 2023, seeking for enhancement of compensation.

3. The case of the claimants is that the deceased Rathinam, who is the mother of the claimants was traveling as a Pillion Rider with her husband, who is none other than the 3rd respondent. It is stated that the 3rd respondent had driven the two wheeler in a rash and negligent manner and dashed on the backside of a lorry bearing Registration No.TN25R1325 and as a result, both of them fell down and the deceased Rathinam sustained grievous injuries and she succumbed to injuries. A very categorical stand has been taken in the claim petition to the effect that the accident had taken place solely due to the rash



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and negligent driving of the two wheeler by the 3rd respondent. It is under these circumstances, the claim petition came to be filed seeking for payment of compensation.

4. The Tribunal on the point of negligence, by relying upon the evidence of PW2, who is said to be the eye witness in this case, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the 3rd respondent.

5. After having come to such a conclusion, the Tribunal fixed the compensation under various heads and determined the total compensation in the following manner :-

Sl.No.	Heads	Amount Rs.
1.	Loss of Income	Rs.16,12,800/-
2.	Loss of Parental Consortium	Rs.80,000/-



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S1.No.	Heads	Amount Rs.
3.	Loss of Estate	Rs.15,000/-
4.	Funeral Expenses	Rs.15,000/-
	Total	Rs.17,22,800/-

The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

6. The award passed by the Tribunal has been challenged by the Insurance company on the ground that the entire claim petition has been filed by putting forth false facts and therefore, the very liability on the part of the insurance company has been put to question. On the other hand, the claimants are seeking for enhancement of compensation on the ground that the compensation fixed by the Tribunal is inadequate.

8. Heard the learned counsel for respective parties.

9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. This Court will first go into the negligence aspect that



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has been raised on the side of the Insurance company. There is no dispute with regard to the fact that the deceased Rathinam had travelled in a two wheeler as a pillion rider with her husband, who is the 3rd respondent. The accident took place on 28.08.2017. The 3rd respondent who drove the two wheeler, gave a complaint before the Thiruvannamalai Taluk police station on 29.08.2017 at about 8.30 a.m. Based on this complaint, an FIR came to be registered in Crime No.668 of 2017 for offence under Section 279 and 304A of IPC. This FIR was marked as Ex.P1. The relevant portions in the FIR are extracted hereunder :-

நேற்று 28.08.2017 ந்தேதி இரவு 8.15 மணியளவில் அல்லவாடி சென்று மளிகை சாமான் வாங்கி வருவதற்காக என்னுடைய TN-02-AX-9528 என்ற பேன் புரோ இருசக்கரவாகனத்தில் என்னுடைய மனைவி ரத்தினம் வயது 35 என்பவரை உட்காரவைத்துக்கொண்டு திமலை to வேலூர் ரோடு கோடிக்குப்பம் கூடரோடு ஏரிக்கரையிடம் வடக்கில் இருந்து தெற்கு நோக்கி ரோட்டின் இடது புறமாக நான் வண்டியை ஓட்டிக்கொண்டு வந்து கொண்டிருந்த போது எனக்கு பின்னாடி அதிக வேகமாக வந்த TN-25-R-1325 என்ற லாரிமேதியதில் என்னுடைய மனைவியும் நானும் வண்டியோடு கீழே விழுந்தோம் என்னுடைய மனைவி



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ரோட்டுபக்கம் விழுந்ததால் அவருடைய கால்கள் மீது லாரியின் சக்கரம் எரியதால் பலத்த காயம் ஏற்பட்டது, லூரி நிற்காமல் சென்று விட்டது. உடனே அடிப்பட்ட என் மனைவியை திமலை அரசு மருத்துவமனைக்கு கூட்டி வந்தேன். டாக்டர் என் மனைவிக்கு சிகிச்சையளித்து உடன் மேல் சிகிச்சைக்காக சென்னை கொண்டு செல்லுமாறு 108 ஆம்புலன்ஸில் அனுப்பி வைத்தார். திண்டிவனம் அருகில் இரவு 11,30 மணியளவில் சென்று கொண்டிருந்த போது என் மனைவி இறந்துவிட்டதாக ஆம்புலன்ஸில் இருந்தவர் சொல்லி திண்டிவனம் அரசுமருத்துவமனைக்கு கூட்டிச்சென்றனர். அங்கு மருத்துவர் என் மனைவியை பரிசோதித்து என் மனைவி இறந்துவிட்டதை ஊர்ஜிதம் செய்து என் மனைவி பிரேதத்தை சவகிடங்கு அனுப்பி வைத்தார் எனவே நடந்த விபத்து சம்மந்தமாக நடவடிக்கை எடுக்குமாறு கேட்டுக்கொள்கிறேன்.

11. The investigation was carried out by the police and a closure report came to be filed before the learned Judicial Magistrate II, Thiruvannamalai as “further action dropped” on the ground that the vehicle that was identified by the 3rd respondent was ultimately found to be the registration number of a Auto Rickshaw and not that of a lorry as claimed by the 3rd respondent. For proper appreciation, the relevant portions from the closure report is extracted hereunder :-

இவ் வழக்கில் இறந்தபோன ரத்தினம் என்பவர் அவருடைய கணவர்



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ஏழுமலை TN-02-AX-9528 என்ற passion pro என்ற

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இருசக்கரவாகனத்தைக் ஒட்டிக் கொண்டு 28.08.2017 ன் தேதி இரவு 20.15

மணிக்கு திரவண்ணாமலை to வேலூர் ரோடு கோடுகுப்பம் கூட்டரோட்டிடம்

வடக்கிலிருந்து தெற்கு நோக்கி வந்து கொண்டிருந்த போது அவருக்கு

பின்னால் வந்த TN-25-R-1325 என்ற லாரி மோதி ஏபமலை மனைவி

ரத்தினத்திற்கு இரண்டு கால்களில் லாரிசக்கரம் ஏறி பலத்தகாயம் ஏற்பட்டு

மேல்நடவடிக்கைக்காக சென்னை அழைத்து கொண்டு திண்டிவனம் அருகே

காயம்பட்ட ரத்தினம் இறந்துவிட்டார் அவர் இறப்பிற்கு வேறு எந்த

காரணமும் சந்தேகமும் இல்லை இவ் வழக்கினை மேல் நடவடிக்கைக்கு

எடுத்தக்கொண்ட காலை 9.30 மணிக்கு சம்பவ இடம் சென்று சாட்சிகள்

கண்ணன் மற்றும் சின்னதுரை ஆகியோர்களின் முன்னிலையில் சாட்சிகளை

விசாரித்து வாக்குமூலம் பெற்றேன். பின்னர் பகல் 12 மணிக்கு திண்டிவனம்

அரசு மருத்துவமனை சவக்கிடங்கு சென்று ரத்தினம் பிரேதத்தை பிரேதத்த

புலனாய்வு செய்ய ஆரம்பித்து பகல் 1330 மணிக்கு முடித்து உடன் பிரேதத்த

பரிசோதனை செய்யவேண்டிய கடிதத்தை சிறப்பு உதவிஆய்வாளர் கண்ணன்

என்பவரிடம் ஒப்படைத்தம் பின்னர் சாட்சிகள் 1 முதல் 8 ஆகியோர்களை

விசாரித்த வாக்குமூலம் பெற்றேன். மேலும் வாதி கொடுத்த புகாரில் விபத்து



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ஏற்படுத்திய வாகனம் லாரி எண் **TN-25-R-1325** அதைப்பற்றி திருவண்ணாமலை மோட்டார் வாகன இ அலுவலகத்தில் கேட்டதற்கு அந்த எண் ஆட்டோவுடையது என சான்று வழங்கியுள்ளதால் இவ்வழக்கில் மேற்கொண்டு நடவடிக்கை எடுக்க முகாந்திரம் இல்லாததால் இவ்வழக்கானது மேல்நடவடிக்கை கைவிட்டு வாதிக்கு RCS No.110/2017 படி சார்வு செய்தும் FR No.1171 of 2017 இறுதி அறிக்கை தாக்கல் செய்தும் திருவண்ணாமலை JM II அவர்களுக்கு அனுப்பி கொண்டேன்.நீதிமன்ற நடைமுறை தாள் வழங்குகோருகிறேன்.

12. On carefully going through the postmortem report which was marked as Ex.P2, the following injuries have been recorded :-

Crush Injury R L involving knee joint and upper one third of leg Abrasion 5 x 2 cm and 2 x 2 cm R dorsum of foot, crush Injury L popliteal region. Abrasion 10 x 4 cm and 15 x 5 cm R groin. Crush injury of external



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genitalia.

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13. The above injuries noted in the post-mortem report clearly shows that a heavy vehicle has run over the deceased resulting in crush injuries both on the right leg and also the external genitalia. It is stated in the post mortem report that the cause of death is due to shock and hemorrhage and multiple injuries.

14. The Appellants were not able to proceed with the case since the vehicle number that was specifically identified by the 3rd respondent when he gave a complaint, pertained to a Auto Rickshaw and not a lorry. Therefore, there was a problem on the very identity of the vehicle that was involved in the incident.

15. The above facts are all borne out by records and it



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cannot be disputed.

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16. All of a sudden, the claimants came up with a new version in the claim petition as if the entire incident had taken place due to the rash and negligence driving of the two wheeler by the 3rd respondent. Curiously, the 3rd respondent has chosen to remain ex-parte and he has not even entered the box. In the instant case, the 3rd respondent could have been the best witness to speak about the accident and for reasons best known to him, he has chosen not to participate in the proceedings. The claimants are young children aged about 19 years and 16 years and therefore, it is quite evident that it is the 3rd respondent who is behind the filing of the claim petition and he is virtually the alter ego of the claimants.

17. The Tribunal has rightly come to a conclusion that the



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evidence of PW1 will not help in fixing the negligence in this case.

This is in view of the fact that PW1 was the first claimant who speaks about the incident in her capacity as a hearsay witness. Hence, the entire case hinges upon the evidence of PW2, who claims to be the eye witness in this case. The Tribunal has in fact relied upon the evidence of PW2 to fix the negligence in this case.

18. PW2 has stated in his evidence that the 3rd respondent was driving the two wheeler in a rash and negligent manner and had dashed the back side of the lorry and as a result, both the rider and the pillion rider fell down and the pillion rider sustained grievous injuries. During cross examination, he specifically states as follows:-

விபத்து குறித்த போலிசார் என்னனை விசாரித்தார்கள். நான் வாக்குமூலத்தில்
கையொப்பம் எதுவும் போலிசாரிடம் இடவில்லை. நான் காவல் நிலையத்தில்



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விபத்து குறித்து புகார் அளிக்கவில்லை. யார் புகார் அளித்தது என்று எனக்கு தெரியாது. விபத்து இரவு 8.15 மணியளவில் நிகழ்ந்தது. எழுமலை இருசக்கர வாகனத்தை வேகமாக ஓட்டிச்சென்று லாரியின் பின்புறம் மோதி ஏற்படத்தினார். நான் சொல்வது போல் விபத்து நிகழவில்லை என்றால் சரியல்ல. நான் விபத்தை நேரில் பார்க்கவில்லை என்றால் சரியல்ல. நான் சொல்வது போல் விபத்தினால் ரத்தினம் இறக்கவில்லை என்றால் சரியல்ல. மனுதாரர்கள் எனக்கு வேண்டப்பட்டவர்கள் என்பதால் நான் பொய் சாட்சியம் அளிக்கிறேன் என்றால் சரியல்ல.

19. Insofar as the proof that is required in a Motor accidents case, it is that of preponderance of probabilities. However, even to see if the case has been proved by applying this test, the Court has to necessarily sit in the armchair of a prudent man and see if the fact that is sought to be proved can be acted upon on the supposition that it exists. For coming to such a conclusion, the Court must either believe that the fact exist considers its existence so probable.



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20. When the above test is applied to the facts of the present case, it is seen that the claim itself has been made on facts which are totally contrary to what was stated by the 3rd respondent, when he gave a complaint after the accident, which resulted in the registration of FIR marked as Ex.P1. The initial case was that the lorry was driven in a rash and negligent manner and had hit the vehicle driven by the 3rd respondent and the wheel of the lorry ran over the deceased resulting in her demise. This fact was turned on its head and all of a sudden, the new version is given in the claim petition as if the 3rd respondent had driven the two wheeler in a rash and negligent manner resulting in the accident.

21. PW2 states that the 3rd respondent has driven the vehicle in a rash and negligent manner and dashed on the back side of the lorry. If this version is taken to be correct, there is



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absolutely no explanation as to how the wheel of the lorry ran over the right leg of the deceased. The injuries as pointed out in the postmortem report cannot be sustained, if really the two wheeler had hit the lorry on the backside.

22. The further issue that has to be taken into consideration is the fact that PW2 specifically gives the Registration number of the so called lorry that was involved in the accident. It is quite surprising as to how PW2 was able to record the registration number of the lorry in this case. In any case, this number that was mentioned by PW2 in the cross examination, turned out to be the registration number of an Auto rickshaw. It is evident from the closure report that was filed by the police. Therefore, the very version that was given by PW2 is highly doubtful and it is unsafe to act upon the evidence of PW2. If the evidence of PW2 goes, there is absolutely no evidence available



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to fix the negligence on the 3rd respondent. At the risk of repetition, it must be stated that it is the 3rd respondent, who will be the best evidence to talk about this accident and unfortunately, the 3rd respondent had chosen to remain away from the Tribunal. This is yet another fact which creates more doubt on the version that has been given in the claim petition seeking for compensation.

23. The Tribunal was carried away by the evidence of PW2. This Court holds that the evidence of PW2 is highly questionable and it cannot be acted upon for the reasons stated supra.

24. The 3rd respondent has virtually used his own children for filing a claim petition and to get the compensation for the demise of his wife. The 3rd respondent should have approached the Tribunal with clean hands and should have stated the correct

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facts. By approaching the Tribunal with false facts, unfortunately, for the demise of the mother of the claimants, this Court is not able to fix the negligence. If the negligence is not able to be fixed, there is no question of directing the insurance company to pay a compensation to the claimants. This finding is rendered with a heavy heart since this Court has no other option except to interfere with the award passed by the Tribunal, which will result in the claimants being deprived of getting any compensation. A case instituted with false facts, is bound to end in this manner and the 3rd respondent has to blame himself for these consequences.

25. In the light of the above discussion, the award passed by the Tribunal in MACT No.1448 of 2017 dated 30.09.2022 is hereby set-aside.



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26. In the result, the CMA No.839 of 2022 is allowed and CMA No.2625 of 2023 is dismissed. In the light of this order, the Insurance company is permitted to withdraw the entire amount that has been deposited with accrued interest. No costs. Consequently, the connected miscellaneous petition is closed.

04.04.2024

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Index: Yes/No
Internet:Yes/No
Speaking order/Non-Speaking Order
To
Motor Accident Claims Tribunal,
Special Sub Court, Thiruvannamalai.



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