



CMA.No.1459 of 2023  
and C.M.P.No.14988 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 27.08.2024**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE R. HEMALATHA**

**C.M.A.No.1459 of 2023**

**and**

**C.M.P.No.14988 of 2023**

M/s. The New India Assurance Company Limited,  
Sethu Krishan Trading Centre, 2nd Floor,  
No.133/31 - A, Trichy Main Road,  
Gugai, Salem.

... Appellant

vs.

1. Kanmani
2. Sundaram
3. A.Periyasamy

... Respondents

(Third respondent remained *ex parte* and notice dispensed with for him)

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 07.03.2023 in M.C.O.P.1356 of 2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellant : Mr.M.Krishnamoorthy

For RR1 and 2 : Mr.L.Ramanathan



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## **J U D G M E N T**

The appellant, the New India Assurance Company Limited, Salem, is the second respondent in M.C.O.P.1356 of 2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem, and they have filed the present appeal questioning the quantum of compensation awarded by the Tribunal.

2. The respondents 1 and 2, claimants filed the claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.20,00,000/- for the death of their son Anandhan, in a road accident that took place on 05.07.2021.

3. The brief case of the claimants is as follows :

On 05.07.2021 at about 5.00 p.m. Anandhan (deceased) was riding a two wheeler bearing Registration Number TN-30-U-3486 on Thammampatti - Malliagarai Road with one Rajadurai as a pillion rider. When they were nearing Pallakadu bus stop, a Tata Ace Vehicle bearing Registration Number TN-77-Z-5279 belonging to the third respondent, hit



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the two wheeler, as a result of which, Anandhan and Rajadurai fell down and sustained injuries. Both of them were immediately rushed to the Government Hospital, Attur. However, Anandhan succumbed to injuries. The claimants are the legal heirs of the deceased Anandhan.

4. According to the claimants, the rash and negligent driving of the driver of the Tata Ace Vehicle was the cause of the accident and that since the owner of the Tata Ace Vehicle had insured his vehicle with the appellant, the New India Assurance Company Limited, Salem, the owner and the insurer are jointly and severally liable to pay compensation to them.

5. In the Tribunal, the owner of the vehicle remained absent and was set *ex parte*. The appellant, the New India Assurance Company Limited, Salem, resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

6. The Tribunal after analysing the evidence on record fixed the negligence on the part of the driver of the Tata Ace Vehicle and awarded



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compensation of Rs.8,33,000/- to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide its orders dated 07.03.2023. The Tribunal also held that the liability of the owner of the Tata Ace Vehicle (third respondent) and the appellant, the New India Assurance Company Limited, Salem, are joint and several.

7. Aggrieved over fastening negligence on the part of the driver of the Tata Ace Vehicle (third respondent), the appellant, the New India Assurance Company Limited, Salem, has filed present appeal under Section 173 of the Motor Vehicles Act, 1988.

8. Heard Mr.M.Krishnamoorthy, learned counsel for the appellant and Mr.L.Ramanathan, learned counsel for the respondents 1 and 2.

9. Mr.M.Krishnamoorthy, learned counsel for the appellant contended that the FIR (Ex.P1) was registered against Anandhan (deceased), the rider of the two wheeler and the police also after



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completing investigation laid a final report against him. He also contended that the claim petition was not filed under Section 163A of the Motor Vehicles Act and instead has been filed under Section 166 of the Motor Vehicles Act. The claimants have not proved the negligence on the part of the driver of the Tata Ace Vehicle bearing Registration Number TN-77-Z-5279 and therefore, the orders passed by the Tribunal fastening negligence on the part of the driver of the Tata Ace Vehicle is liable to be set aside.

10. A perusal of the records shows that the FIR (Ex.P1) was registered against the rider of the two wheeler on the basis of the complaint given by Saravanan (R.W.2) the driver of the Tata Ace Vehicle bearing Registration Number TN-77-Z-5279. Saravanan (R.W.2), in his evidence had stated that he was proceeding towards Malliagarai from Thuraiyur and the two wheeler while over taking another vehicle, crossed the lane and hit his vehicle. According to him, he was not responsible for the accident. The damage to the vehicle according to R.W.2 is on the left hand side. However, in the rough sketch prepared by the police, the place of occurrence is shown on the extreme West side of North - South Road.



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The rough sketch also does not show the position of the vehicles. The claimants have not examined any eyewitness to the occurrence. On the other hand, they relied on the FIR (Ex.P1) which is registered against the deceased (Anandhan).

11. The learned counsel appearing for the appellant relied on the decision of ***Oriental Insurance Company Limited vs. Premlata Shukla and Others*** reported in ***2007 (2) TN MAC 106 (SC)*** and contended that once a part of contents of a document is admitted in evidence, the party bringing the same on record cannot be permitted to turn around and contend that other contents in rest part thereof had not been proved. In the instant case, it is pertinent to point out that the police had not examined the pillion rider (Rajadurai) as an eyewitness to the occurrence as is seen from the final report filed by them. It is also seen from the evidence of R.W.1, the then Special Sub Inspector of Police, Malliyakarai Police Station that the said Rajadurai was examined in the hospital by him. In such circumstances, it is not known as to why his statement did not form part of the final report. In the circumstances, the Tribunal raised a suspicion with regard to the investigation done by the



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police. The relevant portion of the observation of the Tribunal is extracted

hereunder :

" .....

*During the cross examination of the RW1 namely Special Sub Inspector has deposed in his cross examination as*  
மருத்துவமனையிலிருந்து விபத்து குறித்து எங்களுக்கு  
தகவல் வந்தது. விபத்தில் ராஜதுரை என்ற நபர் இருசக்கர  
வாகனத்தில் பின்னால் உட்கார்ந்து வந்து அவரும்  
அடிபட்டுவிட்டார். மேற்படி ராஜதுரையை விபத்தில்  
பாதிக்கப்பட்ட நபராக புலன்விசாரணை அதிகாரி விசாரணை  
செய்துள்ளார். அவரை சம்பவத்தை கண்ணுற்ற சாட்சியாக  
புலன்விசாரணை அதிகாரி விசாரிக்கவில்லை. அவரை ஏன்  
கண்ணுற்ற சாட்சியாக விசாரிக்கவில்லை என்பதற்கான  
காரணம் புலன்விசாரணை அதிகாரிக்கு மட்டும்தான் தெரியும்.  
இறந்துபோனவரின் குடும்பத்தாரிடம் புகார் பெறப்படவில்லை  
என்றால் சரிதான். Such an evidence given by the RW1  
creates a suspicion regarding the registering FIR against the  
deceased. Since the said Rajadurai was the pillion rider in  
the above two-wheeler at the time of the accident, the said  
Rajadurai should have been examined as one among the  
eyewitnesses. Therefore, the version put forth by the  
petitioners that the FIR has been registered against the  
deceased for the best reasons known to the registering  
authority alone is believable. Admittedly the RW2 was the  
driver of the above TATA ACE at the time of the accident.  
The RW2 has deposed in his cross examination as நான் புகார்



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கொடுக்கும்போது 1 ம் எதிர்மனுதாரர் என்னுடன் இருந்தார் and subsequently deposed as வாகனத்தை விடுவிப்பதற்கு உதவி ஆய்வாளர் உதவி செய்தார் என்றால் சரிதான். Therefore it is evident that there is participation on the part of the 1st respondent and the police in releasing the vehicle from the police station. Such a help by the police to relieve the vehicle coupled with the failure on the part of the investigating officer to examine the said Rajadurai as eyewitness makes the court draw inference that the RW2 was rash and negligent in driving the above TATA ACE at the time of the accident. Mere registering the FIR against the deceased is not sufficient to hold that the deceased was rash and negligent in riding the two-wheeler."

12. The above observations of the Tribunal cannot be found fault with, as there are several infirmities in the final report. Moreover, the Tata Ace Vehicle is a four wheeler and the driver of a four wheeler should always be careful while driving his vehicle. He should see on all the four sides of the road while moving his vehicle. Apart from that, while considering the petition for death or injury in a road accident the standard of proof to be applied by the Motor Accident Claims Tribunal is only 'preponderance of probabilities' and the standard of proof of 'beyond



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reasonable doubts' would not apply. The manner of the accident suggests that the driver of the Tata Ace Vehicle was responsible for the accident and the Tribunal had after analysing the evidence on record had rightly concluded that the driver of the Tata Ace Vehicle was rash and negligent in driving his vehicle. Hence, I do not see any reason to interfere with the same.

13. In the result

- i. The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.
- ii. The Award dated 07.03.2023 in M.C.O.P.1356 of 2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem, is hereby confirmed.

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Index : Yes/No  
Speaking/Non-speaking order  
mtl



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To

1. The Motor Accident Claims Tribunal, Special District Court, Salem
2. The Section Officer, V.R. Section, Madras High Court, Chennai.



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**R.HEMALATHA, J.**

mtl

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