

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reservation	19.01.2021
Date of Judgment	23.02.2021

WEB COPY

CORAM:**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

C.M.A(MD)No.1109 of 2016
and
CMP(MD)Nos.7106 and 9983 of 2016

Branch Manager,
M/s.United India Insurance Co. Ltd.,
Kaveri Nagar,
Kulithalai,
Trichy District.

: Appellant/2nd Respondent

Vs.

1.Menaga
2.Sankar Ganesh

: R1 and R2/Claimants

3.Chinnamalaiyan

: R3/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 04.03.2016 made in MCOP No.107 of 2012 on the file of Motor Accident Claims Tribunal (Sub Court), Kulithalai.

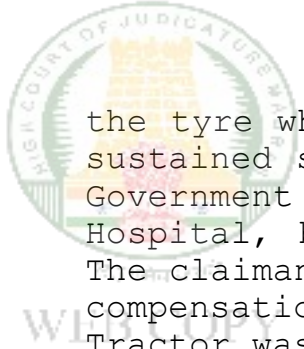
For Appellant : Mr.B.Rajesh Saravanan

For R1 and R2 : Mr.N.Sudhagar Nagaraj

For 3rd Respondent : Mr.C.Padmaraj
(No appearance)**JUDGMENT**

Challenge made in this appeal is to the award passed by the Motor Accident Claims Tribunal (Sub Court), Kulithalai, in MCOP No.107 of 2012, dated 04.03.2016.

2.The brief facts of the case are that on 22.04.2010, while the deceased Adhikesavan was walking on the extreme left side of the Colony Street at Senthamangudi Village, Musiri Taluk, the Tractor TN-48-L-1740, which was standing on the middle of the street and at that time, the driver of the tractor detached its wheel from the tractor and fixed Cage wheel, negligently leaving the tyre wheel standing on the middle of the street without taking proper care, so as not to harm the pedestrian and when the deceased boy passed by



the tyre wheel rolled over him and crushed him and due to which, he sustained severe head injuries and immediately, he was taken to the Government Hospital, Musiri and then, he was referred to the Trichy Hospital, but on the way to the Hospital, he succumbed to injury. The claimants, being the parents of the deceased Adhikesavan, sought compensation of Rs.5,00,000/- on the ground that driver of the Tractor was responsible for the accident.

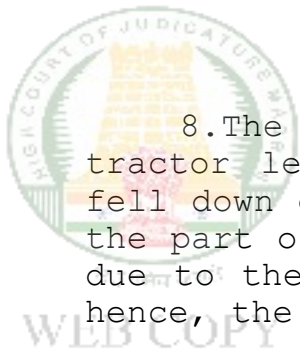
3.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that offending vehicle was responsible for the accident and awarded compensation of Rs.3,30,000/- with interest @ 7.5% p.a. Aggrieved over the award of the tribunal, the Insurance Company as appellant is before this court.

4.Heard both sides and perused the materials available on record.

5.The dispute is in respect of negligence. The learned counsel appearing for the appellant/2nd respondent argued that the tractor, which was insured with the appellant Insurance Company was used for agricultural purpose with steel wheel at the time of alleged accident and the said vehicle did not cause any accident and the stationary tyre fell on the deceased boy due to the negligence on the part of the deceased and the falling of tyre is not a motor accident invoking the insurance policy issued by the appellant/2nd respondent and the Insurance Company is not liable to pay compensation and prays that the Civil Miscellaneous Appeal has to be allowed.

6.On the other hand, the learned counsel appearing for the respondents 1 and 2/claimants submitted that on the date of the alleged occurrence, the driver of the tractor detached its wheel from the tractor and fixed Cage wheel (steel), negligently leaving the tyre wheel standing on the middle of the street without taking proper care, so as not to harm the pedestrian and the deceased boy passed by the tyre wheel rolled over him and crushed him after he fell down and thereby, he sustained severe head injuries and the accident is purely due to the rash and negligent act of the driver of the tractor and the tractor was insured with the appellant Insurance company and hence, the appellant Insurance company is liable to pay compensation and prays that the Civil Miscellaneous Appeal has to be dismissed.

7.The main contention of the appellant/2nd respondent is that there was no accident involving motor vehicle. It is admitted on both sides that the driver of the tractor removed the tyre of the tractor and fixed the steel wheel for agricultural purpose and the driver of the tractor left the tyre of the tractor in the street and the tyre fell down on the deceased.



8. The contention of the claimants is that the driver of the tractor left the wheel of the tractor without proper caution, it fell down on the deceased and he died only due to the negligence on the part of the driver of the tractor and the occurrence took place due to the driver of the tractor and hence, it is an accident and hence, the Insurance Company is liable to pay compensation.

9. The claimants stated that the tractor driver stationed the wheel of the tractor in the middle of the street without any precaution. To disprove that the accident did not occur due to the negligence on the part of the tractor driver, the driver of the offending vehicle was not examined on the side of the appellant/2nd respondent. Only the official of the Insurance Company was examined as RW1. RW1 stated that there was no vehicle involved in the occurrence and hence, they are not liable to pay compensation to the claimants. Hence, it is held that no contra evidence was let in to prove the negligence on the part of the driver of the tractor.

10. It is an admitted fact that the tractor driver, after removing the tyre of the tractor, left the tyre of the tractor in the street. No witness was examined on the side of the appellant/2nd respondent to prove that the tractor driver left the tyre of the vehicle with proper caution. If the tractor driver left the tyre with proper caution, this occurrence will not occur. Hence, it is held that it is an accident due to the falling down of the tyre of the tractor which was due to the negligence on the part of the driver of the offending vehicle. Hence, it amounts to negligence on the part of the driver of the offending vehicle and violation of policy condition. Hence, the tribunal correctly came to the conclusion that the Insurance Company is liable to pay the compensation and then recover the same from the owner of the vehicle.

11. In fine, the Civil Miscellaneous Appeal fails and the same is **dismissed**. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar (CS)

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To,

1. The Sub Judge,
<https://hcservices.ecourts.gov.in/hcservices/>
Motor Accidents Claim Tribunal/
Sub Court, Kulithalai, Karur District.



2.The Record Keeper, (2 COPIES)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.B.RAJESH SARAVANAN, Advocate (SR-6583[F] dated
23/02/2021)

+1 CC to Mr.N.SUDHAGAR NAGARAJ, Advocate (SR-7354[F] dated
25/02/2021)

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