



C.M.A.No.447 of 2016 And
Cross Objection No.42 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.No.447 of 2016
And
C.M.P.No.3403 of 2016
And
Cross Objection No.42 of 2021**

C.M.A.No.447 of 2016:

M/s.Future Generali India Insurance Company Limited
1510, May Flower, Mid City,
II Floor, Trichy Road,
Coimbatore – 18.

... Appellant

Vs.

1.Thilagavathy
2.Minor.Priyadarshini

(Minor represented by
1st respondent Mother
and Guardian)

3.Saraswathi
4.M.Jayakumar
5.P.Ganesan

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1995 of 2010 dated 01.08.2015 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Salem.



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For Appellant : Mr.M.B.Raghavan
For Respondents : Mr.V.Raghavachari for R1 to R4
for Mr.Ma.P.Thangavel
R5 – ND/W

Cross Objection No.42 of 2021:

1.Thilagavathy
2.Minor.Priyadarshini

(Minor represented by
1st respondent Mother
and Guardian/ Thilagavathy)

3.Saraswathi
4.M.Jayakumar

... Cross Objectors

Vs.

1.M/s.Future Generali India Insurance Company Limited
1510, May Flower, Mid City,
II Floor, Trichy Road,
Coimbatore – 18.

2.P.Ganesan

... Respondents

Prayer:

Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code, against the judgment and decree in M.C.O.P.No.1995 of 2010 dated 01.08.2015 on the file of the Motor Accidents Claims Tribunal, II Additional District Court at Salem.

For Cross Objectors : Mr.V.Raghavachari
for Mr.Ma.P.Thangavel
For Respondents : Mr.M.B.Raghavan for R1



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COMMON JUDGMENT

The civil miscellaneous appeal as well as the cross objection have been filed against the judgment and decree dated 01.08.2015 in M.C.O.P.No.1995 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Salem.

2.The second respondent before the Motor Accident Claims Tribunal is the appellant in the civil miscellaneous appeal and the petitioners before the Motor Accident Claims Tribunal are the cross objectors in the cross objection.

3.The brief facts of the case is that on 30.05.2010 at about 6.30a.m., the deceased Senthilkumar was driving his two wheeler bearing Registration No.TN/33/L/3533 in Attaiyampatty – Vennathur Main Road, going towards Attaiyampatty direction at Papparapatty Eri Karai. At that time a JCB bearing Registration No.TN/30/AB/5386 came from opposite direction in a rash and negligent manner and dashed against the two wheeler, due to which, he sustained grievous injuries and was taken to Hospital, however, he died on 06.06.2010.



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4. Thereafter, the dependants of the deceased Senthilkumar/ respondents 1 to 4 in the civil miscellaneous appeal/ cross objectors in cross objection (hereinafter referred to as 'claimants') filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.20 Lakhs. After adjudication, the Motor Accidents Claims Tribunal, awarded a sum of Rs.15,04,060/- as compensation to the claimants and directed the Insurance Company to pay the compensation amount with interest at the rate of 7.5% p.a. from the date of petition till the date of realization and proportionate costs.

5. The learned counsel appearing for the Insurance Company submitted that the accident happened on 30.05.2010 at about 6.30a.m., however, the First Information Report was registered on 31.05.2010 at 11.00 a.m., after 24 hours based on the information given by one Sathyamoorthy/ R.W.4. The Insurance Company received information from the Court. The investigation revealed that no such accident happened. Thereafter, the Insurance Company made complaint before the CBCID on 19.05.2012 and 01.08.2012 and since no action was taken, the Insurance Company filed W.P.No.32665 of 2012 for Mandamus directing the respondents 1 to 5 therein to

4/12



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complete re-investigation on the complaint of the petitioner dated 19.05.2012 and to file final report before appropriate Magistrate Court.

6.The learned counsel appearing for the Insurance Company further submitted that this Court vide order dated 22.04.2014 dismissed the writ petition as withdrawn by recording the memo dated 24.02.2014 filed by the learned counsel who appeared for the Insurance Company therein stating that re-investigation was done by the Police and they confirmed that the criminal case was closed as mistake of fact. However, the Tribunal based on the evidence of P.W.2 who is alleged to be the eye witness available in the scene of occurrence along with R.W.4, passed award in favour of the claimants, which is not sustainable one.

7.The learned counsel appearing for the Insurance Company further submitted that the accident register marked as Ex.R1 and the death summary marked as Ex.R2 and the evidence of the Doctor/ P.W.3 who had given treatment to the deceased makes it clear that the accident happened at the workplace and there is no road traffic accident. Ex.P1 – First Information Report makes it clear that the land borrower machine fell over the leg of the deceased at the workplace.



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The defacto complainant has sent a letter dated 28.05.2014 to the learned Judicial Magistrate, Salem, stating that the defacto complainant himself has withdrawn the complaint on 15.06.2010 and the law investigating agency gave RCS notice stating that the case closed as mistake of fact. Thereafter, the learned Judicial Magistrate No.4, Salem, recorded the appearance of the defacto complainant and closed the case as mistake of fact. The said letter of the defacto complainant and proceedings of the learned Judicial Magistrate No.4, Salem, have been marked as Ex.R12 and Ex.R13.

8.The learned counsel appearing for the Insurance Company further submitted that when R.W.4/ informant himself deny the manner in which the accident happened, the Tribunal without considering all the above facts, passed award in favour of the claimants, based on the evidence of P.W.2 who is alleged to be the eye witness available in the scene of occurrence along with R.W.4, which is not sustainable one.

9.Per contra, the learned counsel appearing for the Cross Objectors submitted that admittedly the accident happened on 6/12



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30.05.2010 at about 6.30 a.m., however, the First Information Report was registered on 31.05.2010 at 11.00 a.m. The Insurance Company Official through the law enforcing agency threatened R.W.4 to withdraw the complaint. Though the law enforcing agency claim that two RCS notice was served on R.W.4, without giving opportunity to the defacto complainant, the case was closed as mistake of fact.

10.The learned counsel appearing for the Cross Objectors further submitted that P.W.2 clearly deposed before the Tribunal that when the deceased Senthilkumar was driving his two wheeler near Papparapatty Eri Karai, the JCB came from opposite direction in a rash and negligent manner and dashed against the two wheeler, due to which, the deceased was thrown away for some distance and he sustained grievous injuries. The learned counsel further submitted that even though the case was closed as mistake of fact, it is not a bar for the dependants of the deceased to make claim before the Tribunal.

11.The learned counsel appearing for the Cross Objectors further submitted that inorder to disprove the accident, the Insurance Company has not examined the owner of the JCB or the driver of the JCB before the Tribunal. Without examining them, the Insurance



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Company questioning the negligence is not sustainable. At the time of accident, the age of the deceased is 35 years. Though the Tribunal rightly adopted the correct multiplier, the amount awarded for loss of income is very very meagre and has not awarded any amount for future prospects. Hence, the cross objectors are entitled for enhancement in compensation.

12.Heard the learned counsel appearing for the Insurance Company as well as the learned counsel appearing for the Cross Objectors and perused the materials available on record.

13.The claimants claim that on 30.05.2010 at about 6.30 a.m., the deceased Senthilkumar was driving his two wheeler in Attaiyampatty – Vennathur Main Road, going towards Attaiyampatty direction at Papparapatty Eri Karai. At that time a JCB came from opposite direction in a rash and negligent manner and dashed against the two wheeler, due to which, the deceased sustained grievous injuries and was taken to Hospital, however, he died on 06.06.2010.

14.Admittedly, the accident register was marked as Ex.R1 and the death summary was marked as Ex.R2 and F.I.R. was marked as



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Ex.P1 before the Tribunal. It is equally un-disputed fact that the case registered by the law enforcing agency was questioned by the Insurance Company by making complaint before the CBCID. The Insurance Company made complaint before the CBCID on 19.05.2012, the postal receipt of which was marked as Ex.R4 and on 01.08.2012, which has been marked as Ex.R3 and since no action was taken, the Insurance Company filed W.P.No.32665 of 2012 for Mandamus directing the respondents 1 to 5 therein to complete re-investigation on the complaint of the petitioner dated 19.05.2012 and to file final report before appropriate Magistrate Court and this Court vide order dated 22.04.2014 dismissed the writ petition as withdrawn by recording the memo dated 24.02.2014 filed by the learned counsel who appeared for the Insurance Company therein stating that re-investigation was done by the Police and they confirmed that the criminal case was closed as mistake of fact.

15.Perusal of records disclose that the defacto complainant has sent a letter dated 28.05.2014 to the learned Judicial Magistrate, Salem, stating that the defacto complainant himself has withdrawn the complaint on 15.06.2010 and the law investigating agency gave notice



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stating the case as mistake of fact. Thereafter, the learned Judicial Magistrate No.4, Salem, recorded the appearance of the defacto complainant and closed the case as mistake of fact. The said letter of the defacto complainant and proceedings of the learned Judicial Magistrate No.4, Salem, have been marked as Ex.R12 and Ex.R13. Hence, Ex.P1 – F.I.R. is not a proof to arrive at a conclusion that the accident happened as alleged by R.W.4 in his complaint.

16.Perusal of the accident register issued by SKS Hospital – Ex.R1 reveals that patient received at 31.05.2010 at 1.56 p.m., alleged injury in right leg at working site on 30.05.2010 morning when the land borrower machine accidentally fell over his leg. Prior to that, the deceased has treatment in London Ortho Hospital, Salem, however, the medical records pertaining to that Hospital was not marked before the Tribunal. The accident register marked as Ex.R1 and the death summary marked as Ex.R2 does not reveal the manner in which the accident happened.

17.When, contrary evidence is available and Hospital evidence is not disputed, the Tribunal based on the evidence of P.W.2 who is



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alleged to be the eye witness available in the scene of occurrence,
passed award in favour of the claimants, which is not sustainable one.
Hence, the impugned judgment is liable to be set aside.

18.The civil miscellaneous appeal is allowed and the cross
objection is dismissed. The judgment and decree dated 01.08.2015
passed in M.C.O.P.No.1995 of 2010 by the Motor Accidents Claims
Tribunal, II Additional District Court, Salem, is set aside. No costs.
Consequently, the connected miscellaneous petition is closed.

06.11.2023

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accident Claims Tribunal,
II Additional District Court,
Salem.



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M.DHANDAPANI,J.
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**C.M.A.No.447 of 2016
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C.M.P.No.3403 of 2016
And
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