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C.M.A.No.567 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2023

Coram:

**THE HONOURABLE MR. JUSTICE P.VELMURUGAN**

C.M.A.No.567 of 2018

1.M.Deepa  
2. M.Suresh  
3.M.Suganya

.. Appellants

**Vs.**

The Director  
The Deputy Superintendent of Police  
Vigilance and Anti-Corruption  
Kanchipuram - 631 502

.. Respondent

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the order and decree passed by the Chief Judge of Motor Accidents Claims Tribunal, Chennai, in M.C.O.P.No.549 of 2015 dated 14.11.2017.

For Appellants : Mr.S.Parthasarathy

For Respondent : Mr.P.Harish  
Government Advocate



## **JUDGMENT**

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This Civil Miscellaneous Appeal is filed to set aside the order and decree passed by the learned Chief Judge of Motor Accidents Claims Tribunal, Chennai passed in M.C.O.P.No.549 of 2015 dated 14.11.2017.

2. The claimants are the appellants. Since one of the vehicles involved in the accident was that of the respondent, they have been added as respondent.

3. On 16.04.2014 at about 14.50 hours, while the deceased namely Shanthi was travelling in an Auto bearing Regn. No.TN-05-H-4435, near South Canal Bank Road, 4th Street, it colluded with a Police Jeep bearing Regn. No.TN-21-G-6000, which was coming from the opposite direction, due to which, the deceased sustained injuries and later, succumbed to the injuries in the hospital. Therefore, the case was registered against the driver of the said Auto and charge sheet was also filed. The claimants who are the daughters and son of the deceased, had filed a claim petition before the Tribunal claiming compensation of Rs.50,00,000/-.



4. The main defence taken by the respondent was that at the time of accident, the driver of the said Auto, in which the deceased was travelling, was in a drunken mood and in an inebriated condition and due to his rash and negligent driving, his Auto dashed against the said Jeep belonging to the respondent. Subsequently, a case was registered against the driver of the said auto and charge sheet was also filed, whereas, neither the driver of the said auto, nor the insurer of the Auto, were impleaded as party to the petition and therefore, the claim petition was hit by non-joinder of necessary parties.

5. On the side of the claimants, 4 witnesses were examined as P.W.1 to P.W.4 and 4 documents were marked as Ex.P.1 to Ex.P.4. On the side of the respondent, one witness was examined as R.W.1 and 4 documents were marked as Ex.R.1 to Ex.R.4.

6. After hearing both sides and upon considering the oral and documentary evidence, the Tribunal has dismissed the claim petition holding that the claim against the respondent is not maintainable. Challenging the same, the claimants have filed the present Civil Miscellaneous Appeal before this Court.



7. The learned counsel for the appellants submitted that mere non-joinder of one of the owners of the vehicle and also the driver and Insurance company which was involved in the said accident, is not fatal to the case and the petition cannot be dismissed on the sole ground of non-joinder of one of the co-vehicle's tort-feasors. He placed reliance on the Judgment of the Karnataka High Court and this Court as follows:

*1. Karnataka State Road Transport Corporation  
Vs. Arun reported in (2004) ACJ 249*

*2. National Insurance Company Limited Vs.  
P.Kannan and Others in C.M.A.No.886 of 2011*

8. The learned counsel further submitted that P.W.4 is the one who gave the complaint before the Police, based on which, the complaint came to be registered. Though in the complaint he has stated that the accident had taken place due to rash and negligent driving of the driver of the said Auto, while examining before the Tribunal as P.W.4, he has stated that only the respondent's vehicle dashed against the said Auto. Further, P.W.2 who is one of the eyewitnesses to the accident, has clearly stated that the accident had happened due to the rash and negligent driving of the driver of the



respondent's vehicle. However, the Tribunal has failed to consider the same and erroneously dismissed the claim petition on the ground that the driver of the Auto or the owner of the Auto or the Insurer of the Auto, were not impleaded as party, which warrants interference by this Court.

9. The learned Government Advocate appearing for the respondent submitted that the case was registered only against the driver of the said Auto. At the time of accident, the driver of the Auto was in a drunken state and he drove the Auto in a rash and negligent manner and dashed against the said Jeep of the respondent. The drunken test receipt was marked as Ex.R.2 and the certificate of drunkenness of the driver of the Auto, was marked as Ex.R.3. Therefore, the respondent has clearly proved that the accident happened due to the rash and negligent driving of the driver of the Auto. The learned Government Advocate further submitted that, neither the driver of the Auto, nor the owner and insurer of the Auto, was impleaded as party and therefore, the Tribunal rightly held that the accident took place due to the drunken drive and rash and negligent driving of the driver of the Auto and dismissed the petition as not maintainable. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.



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10. Heard the learned counsel for the appellants and the learned Government Advocate appearing for the respondent and perused the records.

11. It is not in dispute that on 16.04.2014, at about 2.50 p.m., when the deceased was travelling in the Auto bearing Regn. No.TN-05-H-4435, near South Canal Bank Road, 4<sup>th</sup> Street, the said Auto colluded with a Police Jeep bearing Regn. No.TN-21-G-6000 which was coming from the opposite direction, due to which, the deceased sustained injuries and later, she succumbed to the injuries.

12. Now the questions to be decided in this appeal are;

(i) whether the accident took place either due to the rash and negligent driving of the driver of the Auto alone or,

(ii) the accident took place due to the rash and negligent driving of the driver of the Jeep alone or;



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(ii) the accident happened due to the rash and negligent driving of the drivers of both the vehicles.

13. P.W.4 is the complainant who lodged the complaint stating that the accident had happened due to the rash and negligent driving of the driver of the said Auto, whereas, while examining him as P.W.4, he has deposed that the Jeep hit the auto and he did to know the contents of the complaint. Admittedly, the witness and the evidence of respondent and Ex.R1 to Ex.R3 clearly show that, at the time of accident, the driver who drove the Auto, was in a drunken state. Drunken test was also taken on him. Ex.R2 is the drunken test receipt. Subsequently, drunkenness certificate of the Auto driver has also been obtained and the same was marked as Ex.R.3, which clearly shows that at the time of accident, the driver of the Auto was in a drunken state. However, it is not the case of the respondent that the respondent's Jeep was not there at the time of accident. It is admitted that the said Jeep was driven by the driver of the respondent and the Jeep is also involved in the accident. Though the Jeep colluded with the Auto or the Auto colluded with the Jeep, if



at all, as stated by the respondent, the driver of the Auto drove the vehicle in a rash and negligent manner and in drunken state and as a responsible officer who drives a Jeep in the public road, he should be very conscious in respect of the movement of the vehicles. If the driver of respondent's vehicle was so conscious, he would have noticed that the alleged Auto was coming in a zig zag manner and the driver of the Auto lost his control and coming towards the Jeep and it was likely to hit the Jeep. If the driver of the Jeep was so conscious and careful and not negligent, he could have avoided the accident.

14. The documents marked on the side of the respondent clearly shows that at the time of accident, the driver of the Auto had consumed Alcohol and he had driven the Auto in a drunken mood. However, if the driver of the respondent's Jeep was not negligent and had driven the Jeep within limited speed, he could have avoided the accident or otherwise, he could have avoided the death of the passenger who travelled in the Auto.

15. Therefore, this Court finds that the driver of the respondent's Jeep had also contributed to the negligence in causing injuries to the passenger of the Auto, which subsequently caused the death of the passenger of the Auto.



Therefore, this Court finds that the drivers of both the Auto as well as the Jeep of the respondent, have equally contributed to the negligence for the accident and both are equally liable to pay compensation. The Tribunal should have awarded compensation by fixing 50% liability on the driver of the respondent's Jeep. For mere non-joinder of one of the Co-vehicle's tortfeasor, namely the driver of the Auto, the claimants should not suffer entirely. Since the driver of the Auto was not impleaded as a party, the claimants are entitled to get 50% of the compensation awarded by this Court from the respondent. The respondent is liable to pay 50% of the compensation to the claimants with interest at the rate of 7.5% from the date of claim petition till the date of realisation.

16. As far as the quantum of compensation is concerned, though P.W.3 in her evidence has stated that the deceased was a fish vendor and she used to get fish in wholesale market in Kasimedu and sell the same and she was earning a sum of Rs.50,000/- per month, no supportive evidence was marked to corroborate the same. Further, the respondent has also not denied the fact that the deceased was not a fish vendor. Therefore, the notional income of the deceased herein, is fixed as Rs.10,000/- per month.



17. The relevant multiplicand to be adopted for the age group of persons between 41 to 45, as per the judgment of the Hon'ble Supreme Court in the case of *Sarla Verma & Others Vs. Delhi Transport Corporation* reported in **2009 (2) TN MAC 1 (SC)**, is 14.

18. As regards the future prospects, the Hon'ble Supreme Court has standardized the details for various age group of persons, to be added with income, in the case of *National Insurance Co. Ltd. Vs. Pranay Sethi* reported in **2017 (2) TN MAC 609 (SC)**, wherein, it has been held that for the persons who are aged between 40 to 50 years and for the persons who are self-employed or on a fixed salary, 25% of the income to be added as future prospects while computing the monthly income. Therefore, the monthly income is calculated as Rs.12,500/- (Rs.10,000/-+25%=12,500/-).

19. Accordingly, this Court awards compensation as tabulated below;

| S.No. | Description                          | Amount awarded by this Court (Rs) |
|-------|--------------------------------------|-----------------------------------|
| 1.    | Loss of Income<br>(Rs.12,500x14x12 ) | Rs.21,00,000/-                    |



|                                                              |                                                                                                                        |                                   |
|--------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|-----------------------------------|
| 2.                                                           | Loss of Love and Affection                                                                                             | Rs.1,50,000/-<br>(Rs.50,000/- x3) |
| 3.                                                           | Funeral Expenses                                                                                                       | Rs.10,000/-                       |
| <b>Total Compensation</b>                                    |                                                                                                                        | <b>Rs.22,60,000/-</b>             |
| 4.                                                           | <b>Less:</b> Contributory negligence of 50% on the part of the co-vehicle's tort-feasor involved in the same accident. | Rs.11,30,000/-                    |
| <b>The claimants are entitled to Rs.11,30,000/- equally.</b> |                                                                                                                        |                                   |

20. In the result, this Civil Miscellaneous Appeal is partly allowed.

21. The respondent is directed to deposit the award amount of **Rs.11,30,000/-** now determined by this Court along with interest at the rate of 7.5% from the date of claim petition till the date of realisation, within a period of two months from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.549 of 2015 on the file of Chief Judge of Motor Accidents Claims Tribunal, Chennai. On such deposit, the appellants are permitted to withdraw the award amount now determined by this Court, along with interest.



22. Since the case is pending from the year 2015, the Tribunal is directed to calculate the above said compensation, including the interest etc., and credit the actual amount without any formal application, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

23. The appellants/claimants are directed to pay necessary Court fee, if any, on the compensation amount awarded by this Court. There shall be no order as to costs in the present appeal.

18.07.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

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- 1.The Chief Judge  
Motor Accidents Claims Tribunal, Chennai
2. The Public Prosecutor  
Madras High Court
- 3.The Section Officer,  
VR Section,  
High Court,  
Madras.
- 4.The Director  
The Deputy Superintendent of Police  
Vigilance and Anti-Corruption  
Kanchipuram - 631 502



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**P.VELMURUGAN. J.**

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