



C.M.A(MD)No.484 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	10.02.2023
Date of Judgment	10.03.2023

CORAM

**THE HONOURABLE DR JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR JUSTICE K.K.RAMAKRISHNAN**

C.M.A(MD)No.484 of 2020

1.K.Arun Nagaraj
2.Minor A.Kanyadevi ... Appellants/Petitioners

Vs

1.P.Bharathiraja
2.A.Duraipandi
3.The Sri Ram General Insurance Company Ltd.,
its Branch Manager,
Madurai Branch,
Madurai. ...Respondents/Respondents

[The 1st and 2nd Respondent remained
ex-parte before the Tribunal. Hence,
notice is not necessary to the
Respondents 1 & 2]

PRAYER :- This Civil Miscellaneous Appeal is filed under Section 173

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of Motor Vehicles Act, to set aside the judgment and decree 29.06.2020 passed in M.C.O.P.No.43 of 2017 before MACT, Additional District & Sessions Judge, Periyakulam, Theni.

For Appellants : Mr.M.Palaniselvam
For R1 & R2 : No Appearance
For R3 : Mr.B.Sivaraman

JUDGMENT

K.K.RAMAKRISHNAN, J.

The claimants in M.C.O.P.No.43 of 2017 on the file of MACT, Additional District & Sessions Judge, Periyakulam, Theni, have preferred this appeal against the dismissal of their claim petition.

2.The case of the appellants before the MCOP Claim Tribunal:

The deceased Geetha was the wife of the first appellant and the mother of the second appellant. She was working as Head Constable in the All Women Police Station, Andipatti. On 23.01.2012 on 08.30 a.m, when she was returning to her house after her role call duty by riding a



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TVS XL Motorcycle bearing Reg.No.TN-57-AD-0119, first respondent drove Auto bearing Reg.No.TN-60-F-8325 belong to the second respondent in a rash and negligent manner and dashed against the deceased's two wheeler near Thevar statue, Gandamanur Junction in the Gandamanur Vaigaidam Main Road. In result, she sustained grievous injurious on her head, both eyes, both legs and abrasion injury all over the body. Immediately, she was taken to the Government Medical College Hospital, Theni, and subsequently, she was referred to Government Rajaji Hospital, Madurai. Thereafter, she was admitted in Madurai Appollo Hospital, on 03.01.2012 and treated as inpatient till 06.01.2012. In spite of treatment, she died on 06.01.2012. Regarding the above said occurrence, the Kanavilakku Police Officers initially registered a case against the first respondent in Crime No.4 of 2012 for the offences under Sections 279 & 337 of IPC and thereafter, it was altered into Section 304(A) IPC against the second respondent and after completion of investigation, final report was filed against the first respondent. Therefore, the claimants being dependents of the deceased,



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have filed the claim petition in the above MCOP, claiming compensation of Rs.70 lakhs.

3. The third respondent/Insurance Company filed counter and disputed the liability as well as the negligence on the part of the first respondent. They further stated that due to the negligence of the deceased, the accident was happened. The driver of the second respondent vehicle was not responsible for the accident. Further, they took the stand that the Auto Driver was not having valid driving licence, Fitness Certificate and permit and so, there was a violation of policy. In addition to that, the deceased has driven the vehicle without having valid licence and without even wearing the helmet. Hence, they seek exoneration of liability. Even otherwise, the amount of compensation claimed in the claim petition is excessive.

4.The second respondent was the owner of the auto and the first respondent drove the said vehicle on the date of accident did not appear



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before the Tribunal upon receipt of summon.

5.The Tribunal, after considering the pleadings framed necessary issues and conducted trial by examining P.W.1 & P.W.2 on the side of the claimants and marking Ex.P.1 to Ex.P.14. On the side of the third respondent/Insurance Company, D.W.1 to D.W.4 were examined and exhibits Ex.R.1 to Ex.R.6 were marked.

6. The Tribunal, considering the evidence on record, dismissed the claim petition holding that P.W.1 in his proof affidavit stated that the second respondent drove the vehicle instead of the first respondent, who actually drove the vehicle. The said version is contradictory to the contents of Ex.A1 to Ex.A4 and pleadings. So, the claimants are not clearly proved who caused the accident.

7. Aggrieved over the same, the claimants have preferred the present Civil Miscellaneous Appeal and the learned counsel for the



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appellants contended that the FIR was registered in crime number.4/2012 under Ex.P.1 against the first respondent, namely, Bharathiraja, Auto Driver and the same was investigated and proper final report was filed against the first respondent under Ex.P.4. He further contended that the clerical, inadvertent error in the proof affidavit is not a ground to dismiss the claim petition and the said error was not argued by the learned counsel for the respondents. In such circumstances, the said error was taken into consideration by the Tribunal as a ground for dismissal is not correct. He further contended that R.W.2 came to the witness box and deposed that he did not drive the Auto/the offending vehicle is without pleading and also he has not raised any objection before the Higher Authorities of the Andipatti Police station regarding the false implication of him in the above criminal case. The factum of the deceased drove the vehicle in the East – West direction, the Auto came from the South – North direction in a rash and negligent manner and dashed against the deceased's two wheeler is not disputed by the third respondent. He further contended that unless the Auto proceeded from South - North



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direction and dashed against the deceased's two wheeler, the deceased would not have been thrown away to the North side. So, the abundant evidence available in the case has not been properly appreciated by the Tribunal and hence, he prays for allowing the appeal.

8. Per contra, the learned counsel for the third respondent/ Insurance Company would submit that the findings of the Tribunal that the witnesses examined on the side of the claimants have not ascertained who caused the accident is correct on facts and law and hence, the dismissal of the claim petition by the Tribunal is not liable to be interfered with. Further under Section 166 of the Motor Vehicles Act, claimant must prove their case of negligence on evidence placing reliance on **para 13.4 of the 2013 9 SCC 65 (Reshma Kumari And Others Vs. Madan Mohan And Others)** and also submitted that the deceased was responsible for the accident and she drove the vehicle without wearing helmet and succumbed head injuries. So, negligence to be attributed on the part of the deceased to the extent of 15% by relying



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the decision of this Court in **2017 1 TN MAC 423 (A.Chithra And Others Vs.G.A.Sivakumar and Others)**

9. This Court considered the rival submissions and perused the records and framed the following points for determination:-

1.Whether the third respondent is liable to pay the compensation to the appellants as a insurer of the Auto bearing Reg.No.TN-57-AD-0119 belongs to the second respondent was driven by the first respondent on 03.01.2012 negligently which was resulted in death of the deceased?

2.Whether the dismissal of claim petition by the learned Tribunal Judge on the basis of the mistake happened in the proof affidavit is liable to be interfered with?

10.Issue Nos.1 & 2:-

Admittedly, Ex.P.1, FIR was registered against the first



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respondent/R.W.2. In the said document, it is clearly stated that he alone drove the vehicle in a rash and negligent manner and he was responsible for the accident as stated in the claim petition. On the basis of the said FIR, investigation was completed and final report was filed against him under Ex.P.4. Further, P.W.1 as well as P.W.2 relatives of the deceased, who witnessed the accident was not disproved by R.W.2.

11.In the said circumstances, the Tribunal could not have taken the serious consideration about the inadvertent mistake committed by the Advocate in drafting the proof affidavit of P.W.1 that the vehicle was driven by the second respondent.

12. Without properly appreciating the entire evidence of P.W.1, P.W.2, Ex.P.1, Ex.P.4 and R.W.3, the Tribunal committed error in holding that the claimants have not ascertained who caused the accident as against settled principle of law that the proceedings of the Motor Accidents Claims before the Motor Accidents Claims Tribunal is



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summary in nature and the claimants need not be established their claim beyond reasonable doubt and they have to establish their case on preponderance of probability. The Tribunal has to be taken holistic view in appreciating the pleadings and evidence. When human misery is pitted against the operational negligence of motor vehicle, the Tribunal is duty bound to redress the same by entering into pragmatic way in appreciation of the whole evidence so as to avoid accidental victim in lurch. The Hon'ble Supreme Court in **AIR 1980 SCC 1354 (N.K.V.Brothers (P) Ltd., Vs. Karumai Ammal and others)** emphasized the above requirement in the following words:-

“3. Accidents Tribunals must take special care to see that innocent victim do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to neceties, technicalities and mystic maybes.”

13. The specific case of the claimants is that the first respondent in the claim petition namely, the first respondent/Bharathiraja/R.W.3 drove



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the auto belonged to the second respondent Duraipandi. Both have not appeared before the Tribunal and hence, they were set *ex-parte*. P.W.1 gave the complaint Ex.P.1 stating that while she and P.W.2 were waiting near thevar statue to purchase some household articles at the time of the accident, R.W.3 drove his auto presiding in the South – North direction in a rash and negligent manner dashed against the deceased who came in the East–West direction. The above was investigated by the Investigation Officer and proper final report was filed before the competent Court and R.W.3 has been now facing the trial by making his appearance. He did not take any steps to quash the final report upon making the plea of false implication in the above said case. R.W.3 was impleaded in the MCOP proceedings and he did not file any counter stating that respondent No.2 alone drove the vehicle and caused the accident. But, his evidence, he stated so. Hence, his evidence without pleading is not admissible. From the above available evidence Ex.P1 & Ex.P.4 and the appreciation of the whole evidence of the P.W.1 & P.W.2, it is clear that R.W.3 drove the Auto in a rash and negligent manner and turned into the East – West road



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without precaution into the South – North Vaigaidam road near Kanavilakku Junction, thevar Statue and dashed the deceased. In the result she was thrown out in the northern side and sustained the injuries all over the body including the head. Further, respondent No.2 also not filed any counter denying the manner of the accident. But, for the above evidence, the learned Tribunal Judge has committed error in dismissing the claim petition only on the basis of the mistake found in the proof affidavit of P.W.1 and hence, finding of the learned Tribunal Judge is liable to be set aside and the accident was happened only due to the rash and negligent driving of the first respondent. In result, the respondents 1 to 3 is jointly and severally liable to pay compensation to the claimants.

14.The contesting respondent namely, the Insurance Company have not disputed the factum that the vehicle was driven by R.W.3 and their case is that only due to the negligence of the deceased, the accident was happened.



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15. Merely because the Advocate inadvertently stated in the proof affidavit of P.W.1 that the auto was driven by the second respondent instead of R.W.3, the Tribunal without considering Ex.A.1 and A.4 and the cross-examination of P.W.1 which are clearly established the negligence on the part of the R.W.3, committed error in holding that the claimants have not established the person who drove the auto and dashed against the deceased. It is settled law that due to the mistake of the counsel, party should not suffer. An innocent party cannot suffer injustice because of the mistake committed by the Advocate.

16. The contention of the third respondent that the deceased drove her vehicle without licence and hence, she was responsible for the accident, is not accepted for the reason being that the evidence available clearly established the factum of accident caused by R.W.3 alone. Merely because a person drive the vehicle without licence, the same has not conferred any licence to cause death by driving the vehicle in a rash and negligent manner.



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17. In this case, it is admitted that the two wheeler was driven by the deceased without wearing helmet and sustained head injury which caused to death and hence, this Court fixed the 10% negligence upon her.

18. At the time of accident, the deceased was aged about 29 years and working as Head Constable in the Andipatti All Women Police Station. She was getting salary of Rs.14,808/- per month as per the salary slip marked as Ex.P.14 and 50% of the salary is taken as future prospects which comes around Rs.7,404/- and the total monthly income of the deceased is taken as Rs.22,212/- and the loss of income is calculated after deduction $\frac{1}{2}$ of the monthly income and applying the multiplier of '17' and it comes around **Rs.22,65,624/-** ($22,212 \times \frac{1}{2} \times 12 \times 17$). Further, the deceased took the treatment in the Appollo Hospital and incurred the medical expenditure and the same was proved through the Ex.P.7, Ex.P.8, Ex.P.9, Ex.P.10, Ex.P.11 & Ex.P.13. So, the claimants are entitled to medical expenditure of Rs.1,29,697/-. The claimants are the dependents of the deceased and their dependency is not disputed. There was no



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income tax deduction on account of her income is within limit i.e., in the 2012–13, income tax slap was above 2 lakhs to 5 lakhs-10%.

19. In the said circumstances, the quantum as per the **National Insurance Company Vs. Pranay Sethi and Others** reported in **2017(2) TNMAC 601**, is calculated as follows:-

<i>Sl.No.</i>	<i>Particulars</i>	<i>Amount granted by this Court</i>
1	Loss of Income 22,212x1/2x12x17)	Rs.22,65,624/-
2.	Loss of Love and Affection to the appellants (40,000x2)	Rs. 80,000/-
3.	Loss of Funeral Expenses	Rs. 15,000/-
4.	Loss of Estate	Rs. 10,000/-
5	Medical Expenses	Rs. 1,29,697/-
	Total	Rs.25,00,321/-
	After deducting 10% (Rs. 2,50,032/-) for not wearing helmet Total	Rs.22,50,289/-

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



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No Costs. The appellants are entitled to **Rs.22,50,289/- (Rupees Twenty Two Lakhs Fifty Thousand Two Hundred and Eighty Nine only)** which shall carry interest at the rate of 7.5% per annum from the date of the application.

21.The third respondent/Insurancy Company, is directed to deposit the entire award amount of **Rs.22,50,289/- (Rupees Twenty Two Lakhs Fifty Thousand Two Hundred and Eighty Nine only)** together with accrued interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.43 of 2017 on the file of the MACT, Additional District & Sessions Judge, Periyakulam, Theni, within a period of twelve weeks from the date of receipt of a copy of this order.

22.On such deposit being made by the Insurance Company, the **first appellant** is entitled to **25%** of award amount i.e., **Rs.5,62,572/-** and the **second appellant** is entitled to **75%** of award amount i.e., **Rs.**



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16,87,717/-. The first appellant herein is permitted to withdraw his respective share with proportionate interest. The Tribunal is directed to deposit the share of the minor claimant in any one of the Nationalised Banks, in a Fixed Deposit scheme, till she attain majority. The first appellant, who is the father and guardian of the minor claimant, is permitted to withdraw the accrued interest once in six months directly from the bank for the welfare of minor.

[G.J.J.] & [K.K.R.K.J.]
10.03.2023

NCC :Yes/No
Internet:Yes/No
Index:Yes/No
DSS/PJL

To

- 1.The MACT/Additional District & Sessions Judge,
Periyakulam, Theni,
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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Predelivery Judgment made in
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