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CMA NO.1240 OF 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 05 / 07 / 2024

JUDGMENT DELIVERED ON: 29 / 07 / 2024

CORAM:

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**CMA NO.1240 OF 2020
AND CMP NO.8128 OF 2020**

M/s.TATA AIG General Insurance
Company Limited

No.1, Ethiraj Salai,

Egmore, Chennai – 600 008.

...

Appellant / 2nd Respondent

Vs.

1.Tmt. Vasanthakumari

W/o. Pappuraj

2.Karthika Lakshmi (Minor)

D/o. Pappuraj

3.Johnson Jebakumar (Minor)

S/o. Pappuraj

(Respondents 2 and 3 Minors

Rep. By mother and NF 1st Respondent)

4.Tmt.Rajalakshmi

W/o.Krishnasamy

...

Respondents 1-4/ Petitioners

5.Tmt.Maheswari

W/o. Thamaraichelvan



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6.C.Venkatesan
W/o. Chandraiyan

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7.M/s.Reliance General Insurance Company Ltd.
Rai Towers, Plot No.2054,
II Floor, II Avenue,
Anna Nagar, Near G.R.T.,
Chennai – 600 040.

... Respondents 5 to 7 /
Respondents 3 to 5

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 23.10.2019 made in MCOP No.2575 of 2013 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai, praying to set aside the Award passed by the Tribunal.

For Appellant : Mrs.C.Harini
For M/s.M.B.Gopalan Associates

For Respondents
1 to 4 : Mr.S.Parthasarathy

For Respondent 5 : Person not found

For Respondent 6 : Served – No appearance

For Respondent 7 : Mr.G.Sukumar



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J U D G M E N T

WEB CO **R.SAKTHIVEL, J.**

This Civil Miscellaneous Appeal is preferred by the Insurance Company, challenging the quantum of compensation viz., Rs.32,55,000/- (Rupees Thirty Two Lakh Fifty Five Thousand Only) awarded by the 'Motor Accident Claims Tribunal, (II Court of Small Causes) Chennai' (henceforth 'Tribunal') in M.C.O.P.No.2575 of 2013 vide its Award dated October 23, 2019 for the fatal injuries sustained by the husband of the first respondent/ first petitioner namely Pappuraj in the accident that took place on December 13, 2012.

2.For the sake of convenience, henceforth the parties will be referred to as per their array in the Original Petition.

3.The first petitioner is the wife of the deceased – Pappuraj. The second and third petitioners are his children and the fourth petitioner is his mother.



Petitioners' case

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4.The case of the petitioners is that on December 13, 2012 at about 03.00 hours, the deceased - Pappuraj was travelling in a TATA ACE vehicle bearing Registration No.TN18-M-9579 from Chennai to Villupuram as agent of the goods being transported. They were heading from North to South. As they approached Ponds Powder Company located within the Rosanai Police Station limits, a Lorry bearing Registration No.TN 20-S-4446 was going ahead of their TATA ACE vehicle. At that time, the Driver of the TATA ACE namely Tamaraichelvan drove the vehicle in a rash and negligent manner crashing into the back of the Lorry and thereby, causing the accident. Due to the accident, the first petitioner's husband - Pappuraj sustained fatal injuries and died on the spot. According to the petitioners, both the Driver of the TATA ACE vehicle and the Lorry are responsible for the accident. The 1st and 2nd respondents are owner and insurer of the TATA ACE vehicle respectively. The 4th respondent is the owner of the Lorry and 5th respondent is its insurer. Therefore, the petitioners filed a Claim petition seeking compensation of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) from the respondents.

5.The third and fourth respondents remained absent and therefore, were set *ex-parte* before the Tribunal.



2nd Respondent's case

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6.The second respondent – insurer of the TATA ACE vehicle filed a counter wherein it denied the manner of accident and the injuries sustained by the deceased - Pappuraj. It was further averred that the Driver cum Owner, namely the first respondent did not possess a valid driving license at the time of accident. Therefore, the second respondent is not liable to pay any compensation. The first petitioner's husband was an unauthorised occupant of the goods vehicle and there was no coverage for him. Therefore, the second respondent is not liable to indemnify the first respondent – Thamaraichelvan. Accordingly, it prayed for dismissal of the original petition.

5th Respondent's case

7.The fifth respondent – Insurer of the Lorry filed a counter denying the manner of accident and the fatal injuries sustained by the deceased. It was further averred that the Driver of the Lorry was not responsible for the accident; that the accident occurred due to the rash and negligent driving of the first respondent. Hence, the fifth respondent is not liable to pay any compensation to the petitioners. Accordingly, the fifth respondent prayed to dismiss the original petition.



8.The Tribunal framed the following points for consideration:

- 1)Whether the accident was due to rash and negligent driving of the first respondent or by the Driver of the Lorry?*
- 2)Whether the petitioners are entitled to any compensation?*
- 3)What is the quantum of the compensation that the petitioners are entitled to?*
- 4)Who is liable to pay compensation?*

9.At trial, on the side of the petitioners, the first petitioner was examined as P.W.1, one Paramasivan was examined as P.W.2 and one Nageshwara Rao was examined as P.W.3 and Ex-P.1 to Ex-P.8 were marked. On the side of the respondents, one B.Selva Subramanian was examined as R.W.1 and one M.Venkataramanan was examined as R.W.2 and Ex-R.1 to Ex-R.9 were marked.

Findings of the Tribunal

10.The Tribunal, based on Ex-P.1 First Information Report concluded that the Driver of the TATA ACE alone was responsible for the accident. Since the first respondent's TATA ACE vehicle was insured with the second respondent, the second respondent is liable to pay



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compensation to the petitioner nos.1 to 3. Accordingly, the Tribunal awarded compensation as tabulated hereunder:

Sl.No.	Head	Amount
1	Loss of Dependency	Rs.28,00,000.00
2	Loss of Consortium	Rs.40,000.00
3	Loss of Love and Affection	Rs.2,00,000.00
4	Parental Consortium	Rs.2,00,000.00
5	Funeral expenses	Rs.15,000.00
		Rs.32,55,000.00

11. Feeling aggrieved with the liability fastened on them and the quantum of compensation awarded, the second respondent viz., the insurer of the TATA ACE vehicle viz., TATA AIG General Insurance Company has preferred this Civil Miscellaneous Appeal.

Arguments

12. The learned counsel appearing for the appellant / Insurer of the TATA ACE vehicle has argued that the Tribunal failed to consider the fact that the deceased was not travelling in the TATA ACE vehicle as agent of the goods being transported in the vehicle; that the deceased-



Pappuraj was a gratuitous passenger towards whom the appellant had no liability to pay compensation; that the Tribunal erred in holding that the Driver of the TATA ACE vehicle was responsible for the accident based on the FIR lodged by the Driver of the Lorry and the pursuant final report; that the Tribunal is not right in accepting the sum of Rs.20,000/- as monthly income of the deceased without any sufficient material evidence.

12.1.The learned counsel further argued that the 3rd respondent namely Tmt.Maheswari W/o. Thamaraichelvan, for herself and on behalf of her minor children along with her mother-in-law filed MCOP No.3863 of 2013 before the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai seeking compensation for the fatal injuries suffered by her husband in the very same accident as in the instant case and the same was dismissed.

12.2.Feeing aggrieved with the dismissal order passed in MCOP No.3863 of 2013, the petitioners therein preferred CMA No.1560 of 2018. After an elaborate discussion, a Division Bench of this Court allowed CMA No.1560 of 2018 on October 16, 2020 holding that the



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driver of the lorry bearing Registration No.TN 20-S-4446 was responsible for the accident. In a nutshell, another co-ordinate Bench of this Court has fixed responsibility for the very same accident on the respondents 4 and 5. Therefore, the learned counsel submitted that the appellant / Insurance Company is not liable to pay any compensation. Accordingly, he prayed to allow the appeal.

13.Per contra, learned counsel appearing for the 5th respondent / Insurer of the Lorry has submitted that FIR has been registered against the first respondent and the charge sheet was also laid against the first respondent. Since the first respondent also died in the same accident, the Police closed the charge sheet as abated. The evidence available on record would show that the first respondent caused the accident and therefore, the Driver of the lorry bearing Registration No.TN20-S-4446 is not responsible for the accident. Hence, the fifth respondent/Insurer of the Lorry is not liable to pay compensation. Accordingly, he prayed to dismiss the appeal.



Points for consideration

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14.This Court has considered the submissions made on either side and perused the materials available on record including the judgment of this Court in CMA No.1560 of 2018.

15.The points that arise for consideration are as follows:

(i)Whether the accident was caused by the first respondent or by the Driver of the fourth respondent's Lorry?

(ii)Whether the Tribunal is right in awarding compensation of a sum of Rs.32,55,000/- to the petitioner nos.1 to 3?

(iii)To what other reliefs?

Discussion and Decision

16.Admittedly, the accident occurred on December 13, 2012 at 03.00 hours. The first petitioner was examined as P.W.1. However, she is not a witness to the accident and therefore not a competent person to



depose about the manner of accident. One Paramasivan was examined as

P.W.2 and he deposed that the first respondent was negligent and thereby caused the accident. But P.W.2 did not inform the Police about the accident. Nor was he examined in the criminal case registered based on the complaint given by the Lorry driver. Hence, the evidence of P.W.2 is doubtful. The third respondent who is the wife of first respondent – Tamaraichelvan who also passed away in the same accident filed MCOP No.3863 of 2013. According to the third respondent, the deceased Pappuraj was driving the TATA ACE vehicle and he was solely responsible for the accident. The third respondent herein in her original petition examined one Dakshinamoorthy as an eye witness. A co-ordinate Bench of this Court disbelieved the evidence of the alleged eye witness and held that the Driver of the fourth respondent is the competent witness to depose about the manner of accident. However, the driver of the fourth respondent was not examined. Hence, the Co-ordinate Bench went on to hold that the Driver of the fourth respondent alone is responsible for the accident.

17.For ease of reference, the relevant paragraphs of the judgment of the Co-ordinate Bench of this Court in CMA No.1560 of



2018 dated October 16, 2020 as amended on March 15, 2021 are extracted

hereunder:

“26.We will therefore conclude that the deceased A.Thamaraichelvan was on the wheels of the Tata ACE Mini Van at the time of the accident and the other occupant Babu Raj travelled as an agent of the goods in the said Tata ACE Mini Van.

27.Though as per Exhibits P1/R1 the FIR and R3 Final Report the negligence has been fastened on the driver of the Tata ACE Mini Van namely deceased A.Thamaraichelvan there is no direct evidence to come to a conclusion one way or the other in absence of the evidence of the driver of the lorry himself.

28.The deposition of PW.2 Dakshinamoorthy, the alleged eyewitness who appeared on behalf of the appellants appears to be unreliable and was perhaps introduced with a view to secure relief in favour of the appellants underestimating the powers of the Tribunal to come to a fair conclusion on facts in its quest to award a just compensation to the appellants.

29.In our view, evidence of the PW.2 has been rightly ignored by the Tribunal. At the same time, even in absence of the evidence of PW.2 Dakshinamoorthy, the Tribunal and also this Court has to determine the claim petition based on preponderance of probability.

30.This we say so particularly in absence of any independent evidence of a lorry driver or other eye witnesses who could have given correct evidence regarding the manner of



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the accident.

31.The sole person who was alive who could have given a statement regarding the accident and who is said to have filed Exhibit P1/R1FIR has not been examined. Further, a goods lorry normally also has a cleaner who accompanies the driver. However, there is no evidence to suggest whether the lorry driver alone was present at the time of the accident or whether there was a cleaner.

32.The accident is said to have taken place at about 3.00 a.m. on the highway between Chennai and Tindivanam. Certainly, the statement of the paramedicals who would have come to take the bodies of the deceased could have been produced. The Police Patrol and the Toll gate manning the highways falling within their jurisdiction would have noted the accident and generated independent records. These records have not been produced.

33.The accident sketch filed by the learned counsel for the 2nd respondent Insurance Company indicates that the lorry and the Tata ACE Mini Van were on the extreme left hand side of the highway. Therefore, it cannot be straightaway inferred that the deceased A.Thamaraichelvan was negligent considering the purported time of the accident as the FIR is 3.00 a.m. on 13.12.2012. Exhibit P1/R1FIR merely indicates that criminal proceedings were on account of unnatural death due to the accident. Barring that there is nothing else to be inferred. Further, Exhibit R3 Final Report merely brings a closure of the Exhibit P1/R1 FIR. They do not in any manner establish the truth regarding the negligence or other wise of the lorry driver or the deceased A.Thamaraichelvan.



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34. *The claimants who are the legal representatives of the deceased also cannot be expected to produce the driver of the lorry. It would have been more apposite if both M.C.O.P.No.2575 of 2013 filed by the legal representatives of the deceased Babu Raj and M.C.O.P.No.3863 of 2013 filed by the appellants herein were taken up together and decided by the same Presiding Officer of the Tribunal as both the claims arise out of the same accident.*

35. *We are at a loss to understand why such an exercise was not done. If such an exercise was made, perhaps the Tribunal may have viewed the case differently and come to a slightly different conclusion on facts. Further, it remains unexplained as to why M.C.O.P No. 3863 of 2013 was decided earlier while M.C.O.P.No.2575 of 2013 was decided later even though respondents are common in both cases except that in M.C.O.P.No.2575 of 2013, deceased A.Thamaraichelvan and the insurer of the Tata ACE Mini Van were also named as respondents along with respondents herein. There are also few incongruity in the amounts awarded by the Tribunal in the said case based on the averments. However, we are refraining from making further comments.*

36. *In our view, the learned Presiding Officer of the Tribunal has erred while passing the impugned Judgment and Decree by entirely shifting the burden of proof on the appellants/claimants ignoring the fact that as claimants staying in their house hundreds of miles away for the spot of the accident, they are not expected to prove their case in the same manner as a plaintiff in a Civil Suit.*

37. *They have to merely establish the fact of accident*



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involving motor vehicle. Strict rules of evidence cannot be applied while deciding a claim petition under the provisions of the Motor Vehicles Act, 1988. In our view, it was for the insurance company to establish their defence by letting in positive evidence if it had to really distance itself from the liability cast on it under the provisions of the Motor Vehicles Act, 1988.

38.Further, the Insurance Companies are well organised and have the wherewithal to investigate and ensure witnesses are summoned to prove their case or disprove the claim of the claimants. It is no part of their duty to deny legitimate compensation that is to be paid to dependents for statutory duty is cast on them to pay compensation.

39.They cannot merely rely on Exhibit P1/R1- FIR and Exhibit R3 Final Report. These documents by themselves do not establish as to who was negligent and/or was responsible for the accident. At best, they establish the occurrence of the accident and the death due to the accident.

40.Considering the fact that the accident is of the year 2013 and considering the fact that the driver of the lorry was not produced as a witness by the 2nd respondent Insurance Company to establish negligence on the part of deceased A.Thamaraichelvan, the driver of the Tata ACE Mini Van, we are of the view that the benefit of doubt should go to the appellants who are legal representatives of the deceased A.Thamaraichelvan who died in the accident along with Babu Raj. Mere production of Exhibit P1/R1FIR and Exhibit R3 Final Report was not sufficient to establish the negligence on the part of the deceased A.Thamaraichelvan. These are



documents which are subsequent to the accident and are based on the statement of the lorry driver who was perhaps the sole witness whose statement has not been tested.

41. Under the circumstances, we are inclined to hold that the appellants were entitled to compensation under Section 166 read with Section 168 of the Motor Vehicles Act, 1988. We therefore hold that the Tribunal erred in rejecting the claim petition filed by the appellants before it.

42. Though it was vehemently contended on behalf of the 2nd respondent Insurance Company that no fault liability should be inferred as sketch vide Ex.P3 clearly indicated that the Tata ACE Mini Van driven by the deceased A.Thamaraichelvan came from behind of the insured lorry insured with the 2nd respondent Insurance company and hit the lorry and therefore there should be reduction in the compensation payable to the appellants/claimants on account of no fault liability.

43. We are unable to countenance the same for reducing the compensation to the appellants as there is no evidence to substantiate the contributory negligence on the part of the deceased A.Thamaraichelvan. The accident is said to have taken place at about 3.00 a.m. on 13.12.2012. There are no eye witnesses who had witnessed the accident. Neither the driver of the insured lorry nor the owner of the insured lorry were examined to substantiate the allegation in the FIR. In our view, the FIR had a limited role. It was intended to record the death of two persons on account of the unnatural cause and to initiate and bring the closure to a case on account of the unnatural death. In the proceedings before the Motor Accident Claims



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Tribunal, it was incumbent on the part of the Insurance Companies to have the driver of the insured lorry summoned to give evidence so that his statement could have been tested to confirm as to whether the statement that the accident was on account of the rash and negligent driving of the driver of Tata ACE Mini Van, i.e. deceased A.Thamaraichelvan or there was negligence on his part. We are therefore unable to infer any case of contributory negligence in absence of any other evidences to the contrary.”

18. Considering the facts and circumstances of the case, the fact that the Co-ordinate Bench of this Court has fastened liability on the fifth respondent for the very same accident and there is no reason for this Court to deviate from the said findings of the Co-ordinate Bench. This Court now fastens the liability on the 5th respondent / Insurer of the Lorry bearing Registration No.TN20-S-4446 to pay compensation to the petitioners. Point No.(i) is answered accordingly in favour of the appellant/ 2nd respondent.

19.Regarding the quantum of compensation, the Tribunal fixed Rs.20,000/- as monthly income of the deceased based on Ex-R.1 – Investigation Report. Author of Ex-R.1 was not examined by either side.



In these circumstances, it is unsafe to rely upon the entry made in Ex-R.1

which is a hearsay evidence. On the other hand, petitioners' side examined

P.W.3 - Nageshwara Rao, who is the Manager of PNX Logistics. He deposed that the deceased - Pappuraj was working as Operation Manager and he earned a sum of Rs.16,000/- as gross salary per month and that apart from salary, Travelling Allowance was also provided to the deceased.

Ex-P.5 – Salary slip has been marked through P.W.3. Though P.W.3 has deposed that Travelling Allowance had been offered to the deceased, he did not produce any document to that effect. Hence, this Court is of the opinion that the deceased earned a sum of Rs.16,000/- per month only. The Tribunal is not correct in fixing the monthly income of the deceased at Rs.20,000/- based on Ex-R.1 – Investigation Report. Further, at the time of accident, the age of the deceased was 42 years. The Tribunal has rightly applied the multiplier of '14' and accordingly granted 25% towards future prospects.

20.Relying on Ex-P.3 – Legal Heir certificate of the deceased, the Tribunal computed and deducted 1/3 share as personal expenses of the deceased from the monthly income. However, the total number of



dependants of the deceased is 4. The fourth petitioner (fourth respondent herein) is the mother of the deceased and her name has been left out in the Legal Heir Certificate of the deceased. In the claim petition as well as in the evidence of P.W.1, it has been clearly stated that fourth petitioner is the mother of the deceased. Photograph of the fourth petitioner is also appended in the claim petition. The second and fifth respondents have not denied the said fact. Hence, this Court is inclined to deduct 1/4 share as personal expenses of the deceased from the monthly income of the deceased.

21. Further, in accordance with the guidelines laid down by the Hon'ble Supreme Court in *National Insurance Company Limited v. Pranay Sethi & Ors* reported in (2017) 16 SCC 680, the petitioners are entitled a sum of Rs.15,000/- as loss of estate, first petitioner is entitled to a sum of Rs.40,000/- towards loss of spousal consortium; 2nd and 3rd petitioners are entitled to a sum of Rs.40,000/- each towards loss of parental consortium; 4th petitioner is entitled to a sum of Rs.40,000/- towards loss filial consortium. The petitioners are also entitled to Rs.15,000/- as funeral expenses. The Tribunal is erred in dismissing the



claim petition against the fourth respondent. The reason assigned by the Tribunal in this regard is not satisfactory. The Tribunal is not right in awarding a sum of Rs.2,00,000/- towards loss of love and affection and another sum of Rs.2,00,000/- towards loss of parental consortium. Hence, the petitioners are entitled to compensation as tabulated hereunder:

S.No.	Head	Amount Awarded by the Tribunal	Amount awarded by this Court
1	Loss of Dependency	Rs.28,00,000.00	** Rs.25,20,000.00
2	Loss of Spousal Consortium (for 1 st petitioner)	Rs.40,000.00	Rs.40,000.00
3	Loss of Filial consortium (for 4 th petitioner)	---	Rs.40,000.00
4	Loss of Parental Consortium (for 2 nd and 3 rd petitioners)	Rs.2,00,000.00	Rs.80,000.00
5	Loss of love and affection	2,00,000.00	---
6	Loss of Estate	---	Rs.15,000.00
7	Funeral expenses	Rs.15,000.00	Rs.15,000.00
	Total	Rs.32,55,000.00	Rs.27,10,000.00

******(Rs.16,000/- (I) + Rs.4,000/- (25%) (FP) – Rs.5,000/- - (1/4 PD) X 12 (m) X 14 (M)

Note: 'I' denotes 'income'; 'FP' denotes 'Future Prospects', 'm' denotes 'Multiplier' and “PD” denotes “personal deductions”.

Thus, the petitioners are entitled to a sum of Rs.27,10,000/- (Rupees Twenty Seven Lakh Ten Thousand Only) as compensation from the fifth respondent. In that effect, an Award is passed in favour of the petitioners



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and against the fifth respondent. Point Nos.(ii) and (iii) are answered accordingly.

22.In the result, this Civil Miscellaneous Appeal is allowed and the Award dated October 23, 2019 of the Tribunal is set aside. A fresh Award is passed herein in favour of the petitioners and against the fifth respondent / Insurer of the Lorry bearing Registration No.TN20-S-4446 in the following manner:

(i)The fifth respondent / insurer of the Lorry bearing Registration No.TN20-S-4446 is directed to deposit the award amount of **Rs.27,10,000/- (Rupees Twenty Seven Lakh Ten Thousand Only)** to the credit of MCOP No.2575 of 2013 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai, with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of eight (8) weeks from the date of receipt of a copy of this judgment.



(ii) Upon the deposit, the first petitioner is entitled to a sum of Rs.10,00,000/- (Rupees Ten Lakh Only) with proportionate interest; 2nd and 3rd petitioners are entitled to a sum of Rs.8,00,000/- (Rupees Eight Lakh Only) **EACH** with proportionate interest; and the 4th petitioner is entitled to a sum of Rs.1,10,000/- (Rupees One Lakh Ten Thousand Only) with proportionate interest.

(iii) On such deposit, the first petitioner and fourth petitioner are permitted to withdraw their respective shares as apportioned above, along with proportionate accrued interest.

(iv) The Tribunal shall deposit the shares of the minors viz., petitioner Nos.2 and 3 in a Fixed Deposit, in any one of the Nationalised Banks, which shall be renewable periodically, till the minors attain the age of majority.

(v) The petitioners / claimants are not entitled to interest for the default period, if any.



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(vi)The appellant / insurer of the TATA ACE vehicle is discharged from its liability and permitted to withdraw the amount, if any already deposited before the Tribunal, by filing appropriate application.

(vii)There shall be no order as to costs.

(viii)Consequently, connected Civil Miscellaneous Petition is closed.

[R.S.M., J.]

[R.S.V., J.]

29 / 07 / 2024

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Speaking Order
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R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

TK

To
The Motor Accidents Claims Tribunal
II Court of Small Causes
Chennai.

PRE-DELIVERY JUDGMENT MADE IN

CMA NO.1240 OF 2020

29 / 07 / 2024