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C.M.A.No.638 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

|                      |                   |
|----------------------|-------------------|
| <b>Reserved on</b>   | <b>05.02.2024</b> |
| <b>Pronounced on</b> | <b>16.02.2024</b> |

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.**

**C.M.A.No.638 of 2021**

**and C.M.P.No.3903 of 2021**

The Manager,  
National Insurance Co. Ltd.,  
Karur-639 002.

...Appellant

Vs.

1. Savithri

2. Minor Rahul

3. Minor Janani

(Petitioners 2 and 3 are minors represented  
by their next Friend/Guardian  
Mother 1<sup>st</sup> petitioner Savithri)

4. Owner,

Sri Raghavendra Blue Metals,



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2-B, Pasupathipuram,  
Karur – 639 002

5. Gomathi

6. Manager,

United India Insurance Company Ltd.,  
No.36/11, First Floor,  
Raghavan Complex,  
Vellazha Street, Ariyalur.

...Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 23.03.2020 and made in M.C.O.P.No.98 of 2019 on the file of the Motor Accident Claims Tribunal, Additional District Sessions Court, Ariyalur.

For Appellant : Mr.S.Vadivel

For Respondents : Mr.S.Arunkumar for R6

No Appearance for R1 to R5

### **JUDGMENT**

The above Civil Miscellaneous Petition is preferred against the award and decree dated 23.03.2020 passed in M.C.O.P.No.98 of 2019 on the file of the Motor Accident Claims Tribunal, Additional District Sessions



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Court, Ariyalur.

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2. The case of the claimant before the Tribunal is that, on 20.11.2016 at about 10.30 p.m, deceased Ravi was driving a lorry carrying graphite stones bearing Registration No.TN 68 C 3228 in the Karur to Tiruchy bypass road from west to east towards Uppidamangalam bridge in a moderate speed. At that time, a Taurus lorry bearing Registration No.TN 47 R 7471 was stationed without any indicator and red flag by its driver on the right side, near the central median. Since there was no light, the deceased dashed against the said lorry from the back side and sustained fatal injuries. Then, he was taken to the nearby hospital at Karur, where he succumbed to the injuries sustained by him. Hence, the accident occurred due to the negligent act of the 1<sup>st</sup> respondent driver. Accordingly, the legal heirs of the deceased claim compensation for a sum of Rs.30,00,000/- against the respondents.

3. The respondents alleged that the 1<sup>st</sup> respondent's driver was moving the lorry bearing Registration No.TN 47 R 7471 keeping his left side of the road towards East direction. The heavy vehicles were plying in the opposite direction. At that time, the deceased Ravi came behind the 1<sup>st</sup>



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respondent's lorry, suddenly overtook the 1<sup>st</sup> respondent's lorry when the heavy vehicles were coming like a chain in the opposite direction without following any road rules. The deceased while overtaking the 1<sup>st</sup> respondent's lorry took a sharp turn after seeing the opposite side lorry and dashed the right side body of the moving 1<sup>st</sup> respondent's lorry and invited the accident. The accident had happened only because due to the negligence of the deceased Ravi due to his rash and negligent manner of driving. If the deceased had followed the traffic rules, the accident would not have happened.. The 1<sup>st</sup> respondent's lorry driver did not park the lorry as alleged in the petition and no lorry driver would stop the lorry in the over bridge of the Highways. The petitioner's relative who had retired from police department influenced the police by furnishing false details register the F.I.R for the purpose of claim.

4. Hence, the deceased Ravi, the 3<sup>rd</sup> respondent's lorry driver sustained injuries and succumbed to death only due to his own negligence. The petitioners can ask compensation only from the 3<sup>rd</sup> and 4<sup>th</sup> respondents for the accident during the course of employment under the Employees Compensation Act, 1923. Without any iota of evidence, the 1<sup>st</sup> and 2<sup>nd</sup>



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respondents have been implicated in the petition for getting unjust compensation. If at all any compensation is paid to the petitioners, 3<sup>rd</sup> and 4<sup>th</sup> respondents are alone liable to pay compensation to the petitioners. The petition is liable to be dismissed as against 1<sup>st</sup> and 2<sup>nd</sup> respondents. Since the accident had happened due to the 1<sup>st</sup> petitioner's husband rash and negligent driving, the petitioners cannot file the petition under section 166 of Motor Vehicles Act.

5. Before the Tribunal, the 1<sup>st</sup> petitioner/wife of the deceased was examined as P.W.1. One Elangovan, cleaner of the vehicle driven by the deceased was examined as P.W.2. Ex.P.1 to Ex.P.13 were marked on the side of the petitioner. On the other hand, the driver of the 1<sup>st</sup> respondent was examined as R.W.1. No document was filed on the side of the respondents.

6. The Tribunal after considering the materials on record held that the accident had taken place due to the negligent act of the driver of the 1<sup>st</sup> respondent and fixed the liability on the 1<sup>st</sup> and 2<sup>nd</sup> respondents and ordered that 1<sup>st</sup> and 2<sup>nd</sup> respondents are liable to pay the compensation awarded to the



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claimants. The 2<sup>nd</sup> respondent/Insurance Company is on appeal.

7. The learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company would contend that the M.A.C.T erred in fixing the entire liability on the appellant. He would submit that the Tribunal ought not to have fixed the entire negligence on the driver of the lorry bearing Registration No.TN 47 R 7471 on the basis of Ex.P.1-FIR and Ex.P.13 Charge Sheet. The Tribunal having found that the evidence of P.W.2, who claim to be cleaner in the lorry bearing Registration No.TN 68 C 3228 at the relevant time was doubtful, the Tribunal ought not to have fixed the entire negligence on the driver of the lorry bearing Registration No.TN 47 R 7471. His further contention is that except P.W.2, the claimants have not examined any other independent witness to establish the case of the claimants. In such circumstances, the Tribunal ought not to have fixed the entire negligence on the driver of the lorry bearing Registration No.TN 47 R 7471. He would submit that the Tribunal ought to have apportioned the negligence between the drivers of both lorries. His further submission is that the complaint was lodged by the close relative of P.W.1, and such being the case, the FIR should not have been relied upon by



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the Tribunal to fix the negligence on the 1<sup>st</sup> respondent driver.

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8. The learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company further submitted that the Tribunal failed to apply the principles laid down in the decided case reported in 2017 (2) TN MAC 205, in which, the facts are identical to the case on hand. The Tribunal ought not to have relied upon the decisions reported in 2009 (1) TN MAC 72 and 2018 (1) TN MAC 544 (SC), since the facts are different. He would submit that there was no proof that the 1<sup>st</sup> respondent lorry was parked in the middle of the road. P.W.1 and P.W.2 could not have seen the accident. In such circumstances, the Tribunal ought not to have applied the principles laid down in the above cited cases and ought to have seen that the 1<sup>st</sup> respondent vehicle driver namely R.W.1 is the best evidence on the side of the appellant to establish the manner of accident. Moreover, in the pleadings, it is averred that if it is found that the deceased has contributed for the accident the 3<sup>rd</sup> and 4<sup>th</sup> respondents are liable to pay the compensation to the claimants under the Workmen's Compensation Act. The learned counsel would submit that the above pleadings of the claimants would show that they were not definite with regard



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to the manner of accident. While so, the Tribunal ought to have fixed 50% of the contributory negligence on the part of the deceased. Hence, prays for setting aside the order passed in M.C.O.P.No.98 of 2019 by the Motor Accident Claims Tribunal, Additional District Sessions Court, Ariyalur.

9. On the other hand, the learned counsel appearing for the 6<sup>th</sup> respondent/Insurance Company, insurer of the lorry bearing Registration No.TN 68 C 3228 would submit that, in the absence of any evidence that the offending vehicle bearing Registration No.TN 47 R 7471 was on motion and was not parked on the over bridge as alleged by the claimants, the Tribunal has rightly fixed the liability on the 1<sup>st</sup> and 2<sup>nd</sup> respondents call for any interference.

10. The respondents 1 to 5/Claimants remained exparte.

11. Heard on both sides. Records perused.

12. The question of contributory negligence arises in case where the injured/deceased contributed to the accident. It is true in cases of two



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vehicles are involved, the possibility of Contributory Negligence could not be ruled out. But in order to find whether there is Contributory Negligence, convincing evidence is necessary. If the police charge attributes the Contributory Negligence, the same can be relied on to find Contributory Negligence. But in cases, where the police charge attributes negligence against the driver of one vehicle involved, unless there is no other independent evidence adduced or available to prove the Contributory Negligence, the evidence of R.W.1, the driver of the offending vehicle would not suffice, since it is an interested witness. It is the duty of the party, who alleges Contributory Negligence, to prove the same. In this case, the FIR is registered only against the driver of the 1<sup>st</sup> respondent vehicle and the 1<sup>st</sup> respondent driver was alone charge sheeted. The FIR and the Charge Sheet are marked as Ex.P1 and Ex.P13. The appellant/Insurance Company failed to establish that the 1<sup>st</sup> respondent vehicle was on motion and was not parked on the highway bridge as alleged by the claimants. No investigation report was filed by the appellant/Insurance Company and no complaint was preferred by the appellant. Therefore, in the absence of any evidence to show the wrongful act on the part of the deceased which contributed to the accident, the deceased



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could not be held guilty of Contributory Negligence. Therefore, the contention of the claimants and the 6<sup>th</sup> respondent/ Insurance Company in this appeal that the 1<sup>st</sup> respondent vehicle was parked without indicator cannot be doubted. Therefore, the Tribunal has rightly held that the accident has taken place only due to the negligent act of the 1<sup>st</sup> respondent driver. Accordingly, the said finding is hereby confirmed.

13. In the result, the appeal stands dismissed and it is it held that the 2<sup>nd</sup> respondent/Insurance Company is liable to pay the compensation fixed by the Tribunal along with the interest and with liberty to the petitioners to withdraw the same on deposit. Consequently, Connected miscellaneous petition is closed. No costs.

16.02.2024

Internet:Yes/No  
Index:Yes/No  
Speaking/Non-speaking order  
mac/vsn

To

1. Motor Accident Claims Tribunal, Ariyalur.

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2. The Section Officer,  
VR Section, High Court, Madras.

**K.GOVINDARAJAN THILAKAVADI, J.**

mac/vsn

**Pre-Delivery Judgment made in**

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