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CMA NO.1315 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 18 / 11 / 2024

JUDGMENT DELIVERED ON : 09 / 12 / 2024

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**CMA NO.1315 OF 2022
AND CMP NO.9542 OF 2022**

The Divisional Manager
United India Insurance Company Limited,
Divisional Office, Dhurga Bhavani Square,
Opposite to Railway Station,
Denkanikotta Road, Hosur – 635109. ... Appellant /
2nd Respondent

Vs.

1.Priya W/o. Late Boopathy
2.Minor Nithya D/o. Late Boopathy
3.Minor Dhiya D/o. Late Boopathy
(Minors Rep. By their next friend
and mother - Priya)
4.Rani
5.Perumal ... Respondents 1 to 5 /
Petitioners

6.Magesh ... 6th Respondent /
1st Respondent



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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated September 24, 2019 made in M.C.O.P. No.55 of 2018 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Hosur.

For Appellant : Mr.D.Bhaskaran

For Respondents 1-5 : Mr.S.P.Yuaraj

For Respondent 6 : Mr.K.Vasanthanayagan

J U D G M E N T

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated September 24, 2019 passed by the 'Motor Accident Claims Tribunal (Additional District Judge), Hosur' ['Tribunal' for short] in M.C.O.P.No.55 of 2018, the second respondent therein - Insurance Company has preferred this Civil Miscellaneous Appeal praying to set aside the Award.

2. Hereinafter, for the sake of convenience, the parties will be denoted as per their array before the Tribunal.

PETITIONERS' CASE IN BRIEF:

3. The first petitioner is the wife of the deceased – Boopathi while second and third petitioners are their children. Fourth and fifth



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petitioners are the parents of the deceased - Boopathi. On November 17, 2014 at about 19.15 hours, the deceased - Boopathi was travelling in a motorcycle bearing Registration No.KA.04.EW.9547 as the pillion. The first respondent, namely Magesh, son of Munisamy, was riding the motorcycle.

3.1. When the motorcycle was proceeding near Dharga Muthumariyamman Koil on Bangalore to Hosur NH 7 Road, the first respondent rode the Motorcycle in a rash, reckless and negligent manner, and swerved right to overtake a lorry and abruptly slowed down. Consequently, a lorry coming behind dashed on the motorcycle's back side and fled the scene. Due to the impact, the deceased sustained fatal injuries to his head and other parts of his body and passed away on the spot.

3.2. The Hosur Traffic Investigation Wing [TIW] Police registered a case stating negligence of the lorry in Crime No.337 of 2014 under Sections 279, 337 and 304(A) of the Indian Penal Code, 1860. At the time of accident, the deceased was 33 years old. He was running a company by name 'New Star Scientific Company' at Hosur and earning a sum of not less than Rs.50,000/- per month. Hence, the petitioners filed an



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application before the Tribunal seeking compensation of Rs.75,00,000/- (Rupees Seventy Five Lakhs only) against the respondents on December 19, 2017 and the same was taken on file on February 22, 2018.

SECOND RESPONDENT'S CASE IN BRIEF:

4. The second respondent filed Counter, whereby it denied the averments made in the petition and contended that the petitioners are put to strict proof of the same. The second respondent further contended thereby that the accident happened due to the negligence of driver of an unidentified lorry. There is no fault on the part of the first respondent. Further, the first respondent has not co-operated with the second respondent by producing the necessary documents and deposing before the Tribunal, thereby violating the policy terms. Hence, the second respondent– Insurance Company is not liable to pay any compensation to the petitioners. Accordingly, it prayed to dismiss the Original Petition.

TRIBUNAL:

5. Before the Tribunal, on the side of the petitioners, the first petitioner – Priya was examined as P.W.1, one Govindaraj was examined as P.W.2 and Ex-P.1 to Ex-P.22 were marked. On the side of the



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respondents, one B.Sumathi was examined as R.W.1 and the Motor Vehicle Inspection Report [M.V.I. Report] of the motorcycle was marked as Ex-R.1.

6. Upon hearing both sides and considering the oral and documentary evidence, the Tribunal, relying on the evidence of P.W.1 and Ex-P.1—First Information Report (FIR), concluded that the accident occurred due to the rash and negligent act of the rider of the motorcycle. Further held that at the time of accident, the first respondent's motorcycle was insured with the second respondent and therefore, the second respondent is liable to pay compensation to the petitioners. As regards quantum of compensation, the Tribunal held that the petitioner was running a company by name 'New Star Scientific Company' at Hosur and was earning not less than Rs.50,000/- per month therefrom. By relying on Ex-P.9 - Income Tax Returns of the deceased, the Tribunal fixed yearly income of the deceased at Rs.2,42,200/-. Accordingly, the Tribunal directed the second respondent to pay a sum of Rs.42,03,960/- as compensation to the petitioners with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The split up figure is as follows:



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<i>S.No.</i>	<i>Head</i>	<i>Amount Rs.</i>
1	Loss of dependency	Rs.29,06,400.00
2	Loss of love and affection	Rs.50,000.00
3	Transportation	Rs.10,000.00
4	Funeral Expenses	Rs.15,000.00
5	Loss of Estate	Rs.20,000.00
6	Future Prospects	Rs.11,62,560.00
7	Loss of Consortium	Rs.40,000.00
	Total	Rs.42,03,960.00

7. Aggrieved by the Award, the second respondent – Insurance Company has filed this Civil Miscellaneous Appeal.

ARGUMENTS:

8. Mr.D.Bhaskaran, learned Counsel for the appellant / second respondent argued that Ex-P.1 - FIR was registered based on the complaint given by the first respondent against an unidentified lorry, which caused the accident. The petitioners never preferred any private complaint against the first respondent nor took any steps to implicate first respondent. Further, the petitioners' side examined one Govindaraj as P.W.2, who is said to be an ocular witness to the accident. He deposed that the accident occurred due to the rash and negligent driving of the driver of an unidentified lorry. A conjoint reading of Ex-P.1 - FIR and evidence of P.W.2 would clearly establish that the accident occurred due to the rash



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and negligent driving of the driver of an unidentified lorry. Further, the first respondent, at whose instance an FIR was registered against the unidentified lorry, ought to have cooperated with the second respondent – Insurance Company by producing his Driving License and adducing oral evidence to unfurl the truth. But the first respondent did not cooperate with the second respondent. In these circumstances, the second respondent - Insurance Company is not liable to pay any compensation to the petitioners. The Tribunal in a wrong notion found that the petitioners can maintain Claim Petition against either the lorry or the motorcycle, which is erroneous application of law. Accordingly, he prayed to allow the Civil Miscellaneous Appeal and set aside the impugned Award. He relied on the Judgments of this Court in *United India Insurance Co. Ltd., Chennai -vs- D.Hemavathi and others*, reported in *2017 (2) TNMAC 115*, and *United India Insurance Co. Ltd. -vs- Susheela Jothi Mary*, reported in *2020 (2) TNMAC 455*.

9. Per contra, Mr.S.P.Yuaraj, learned Counsel for the respondent nos.1 to 5 / petitioners argued that though Ex-P.1 - FIR was registered against an unidentified lorry, the evidence of the ocular witness (P.W.2) would clearly establish that the accident occurred due to the rash



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and negligent riding of the first respondent. At the time of accident, the first respondent's motorcycle was insured with the second respondent under a Package Policy. Further, Section 166 of the Motor Vehicles Act, 1988 ['M.V. Act' for short] is a piece of beneficial and social welfare legislation. In these circumstances, the Court shall be pleased to interpret the provisions thereof leniently in favour of the claimants. The Tribunal after considering all the materials and evidence, has rightly passed the Award and there is no need to interfere with it. Accordingly, he prayed to sustain the Award passed by the Tribunal. He relied on the Judgment of Hon'ble Supreme Court in *Anitha Sharma -vs- New India Assurance Co. Ltd.*, reported in *CDJ 2020 SC 871* and the Judgment of this Court in *National Insurance Company Limited -vs- Anbarasi and others*, reported in *CDJ 2019 MHC 5931*.

10. Mr.K.Vasanthanayagan, learned Counsel for the sixth respondent / first respondent submitted that the accident occurred due to the rash and negligent act of the driver of an unidentified lorry and not because of any negligence on the part of first respondent. At the time of accident, the first respondent's vehicle was insured with the second respondent. Hence, if at all the first respondent is found negligent, the



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second respondent is liable to pay the compensation as per the insurance policy.

DISCUSSION:

11. Heard on both sides. Perused the entire evidence available on record.

12. Accident occurred on November 17, 2014. According to the petitioners, the accident occurred due to the rash and negligent riding of the first respondent. Though notice was served on the first respondent, the first respondent did not choose to contest the petition. The second respondent – Insurance Company filed a petition under Section 170 of the M.V. Act and the same was allowed and thereby, second respondent was permitted to take all defenses available to the first respondent also.

13. The petitioners' side examined one Govindaraj as P.W.2 who is said to be an ocular witness to the accident. In his chief examination, he has deposed that the first respondent was the sole reason for the accident. But in his cross examination, he has deposed that an unidentified lorry dashed against the motorcycle leading to the accident. Though his evidence on the face of it appears to be inconsistent, a close



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and comprehensive perusal of the same would show that he does not disown his assertion that the first respondent is responsible for the accident. He was trying to depose that because the first respondent swerved right, an unidentified lorry travelling behind the motorcycle dashed against it causing the accident. This is evident from the fact that he has denied the suggestion that the first respondent is not responsible for the accident in the very same cross-examination. Hence, his deposition cannot be construed to mean that the first respondent is not responsible for the accident. Further, P.W.2 is a relative of the petitioners, but, merely because P.W.2 is related to the petitioners, his evidence cannot be brushed aside entirely.

14. That apart, FIR filed on the same day of the accident at the instance of first respondent states negligence on the part of an unidentified lorry. As per the evidence of R.W.1 – B.Sumathi, Grade – I Police Constable attached to Traffic Investigation Wing, Hosur, pursuant to Ex-P.1, no charge sheet has been filed. But the Claim Petition filed four years thereafter states negligence on the part of the first respondent. While so, first respondent is the competent person to clearly depose about the manner of accident and remove the clouds surrounding the manner of



accident. Hence, first respondent ought to have either contested the case or entered into the witness box and deposed about the manner of accident or at least cooperated with the second respondent by producing the relevant particulars and documents such as his driving license.

15. However, first respondent has abstained himself from contesting the case despite sufficient service and therefore, was set *ex-parte* by the Tribunal, and also failed to cooperate with the second respondent – Insurance Company. An empty room holds no space for truth to unfurl. The second respondent has specifically taken a stand that the first respondent did not furnish the Registration Certificate, Driving License, Insurance particulars, *etc* and cooperate with them, making it difficult for them to unfurl the truth, thereby violating the terms and conditions of the Insurance Policy. Further, M.V. Act is a piece of beneficial and welfare legislation and has to be interpreted leniently in favour of the affected parties / claimants.

16. In these circumstances, in view of the pleadings as well as the evidence of P.W.2, this Court is of the view that the accident occurred due to the negligent riding of the first respondent. Admittedly, the first



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respondent's vehicle is insured with the second respondent under Ex-P.3

Package Policy *vide* Policy No.1710003113P108450728 and the same was in force on the date of accident i.e., Policy Start Date - March 21, 2014 and Expiry Date – March 20, 2015. Hence, the second respondent as the insurer of the first respondent's motorcycle is liable to pay compensation to the petitioners. Since the first respondent, who is the competent person to depose about the manner of accident, failed to enter into the witness box and cooperate with the second respondent by producing necessary documents, especially when the Insurance Company has taken a specific stand that the first respondent did not furnish the Registration Certificate, Driving License, Insurance particulars, *etc.*, as contemplated by the policy making it difficult for them to unfurl the truth, the second respondent shall pay the compensation to the petitioners and recover the same from the first respondent as if a Decree is passed in his favour and against the first respondent in this regard.

17. Further, the Tribunal is wrong in its finding that the claimants have the choice to proceed against either the unidentified lorry or the first respondent. A claim petition can lie only against the tort-feasor (s). The claimants do not have any such option as held by the



Tribunal for the reason that in this case the first respondent is the sole tort-feasor and this is not a case of composite negligence.

18. As far as ***Hemavathi's Case*** (cited *supra*) is concerned, the deceased therein is the pillion rider of the motorcycle. In that case, while the FIR attributed negligence on an unidentified Auto-rickshaw, the claim petition was filed against the rider of the said motorcycle. In this factual matrix, relying on the categoric deposition of the owner of the said motorcycle that an unidentified Auto-rickshaw is the sole reason for the accident coupled with the FIR, this Court held that the Insurer of the said motorcycle is not liable to compensate. In the case on hand, first respondent never contested the case. He neither entered into the witness box nor cooperated with the Insurance Company as stated *supra*. Hence, ***Hemavathi's Case*** is not applicable to the instant case.

19. In ***Susheela Jothi Mary's Case*** (cited *supra*), FIR was registered by the injured's brother against an identified motorcycle while the claim petition was filed against the rider of the motorcycle in which the injured was travelling, who is none other than the injured person's husband. In that case, this Court held that since the said identified vehicle



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lacked insurance, conveniently the injured claimed compensation from her husband, who is not a joint tort-feasor and therefore, the Insurance Company is not liable to compensate. In the instant case, the first respondent is the tort-feasor and hence ***Susheela Jothi Mary's Case*** is not applicable to the instant case.

20. There is no quarrel with the proposition of law laid down in ***Anitha Sharma's Case*** and ***Anbarasi's Case*** (cited *supra*) relied on by the learned Counsel for the respondents 1 to 5 / petitioners.

21. With regard to the quantum of compensation, based on Ex-P.2 – Post-mortem report, the Tribunal fixed the age of the deceased at 35 years. But Ex-P.5 – Transfer Certificates would show that his date of birth is March 4, 1985, which means at the time of accident the deceased was 29 years old. The Tribunal ought not to have relied on Ex-P.2 – Post-mortem report in the presence of Ex-P.5 – Transfer Certificates for determining the age. Hence, the Tribunal is wrong in fixing the deceased's age at 35 years and consequently, the multiplier of 16 applied by the Tribunal is also wrong. However, the petitioners did not prefer any appeal or cross objection or make any oral prayer during the hearings. This shows



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that the petitioners are satisfied with the quantum of compensation. Hence, in the facts and circumstances of this case, this Court is not inclined to interfere with the quantum of compensation awarded by the Tribunal.

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

- (i) The Award dated September 24, 2019 passed in M.C.O.P.No.55 of 2018 by the Tribunal for a sum of Rs.42,03,960/- with interest at the rate of 7.5% per annum from the date of filing petition till the date of deposit, is hereby confirmed;
- (ii) The appellant – Insurance Company shall deposit the aforementioned Award amount along with interest within 45 days from the date of receipt of copy of this Judgment in the manner stipulated in the impugned Award and then recover the same from the first respondent by filing an execution petition against the first respondent in the Original Petition. It is clarified that the second respondent need not file a separate Suit in this regard;



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- (iii) The share apportioned by the Tribunal remains unaltered;
- (iv) Considering the facts and circumstances of the case, there shall be no order as to costs;
- (v) Consequently, connected Civil Miscellaneous Petition is closed.

[J.N.B., J.]

[R.S.V., J.]

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Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK

To

The Motor Accidents Claims Tribunal
(Additional District Judge)
Hosur.



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CMA NO.1315 OF 2022

J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
CMA NO.1315 OF 2022

09 / 12 / 2024