



C.M.A.No.2225 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 11.12.2024**

CORAM :

**THE HONOURABLE MR. JUSTICE M. DHANDAPANI**

**C.M.A.No.2225 of 2021**

HDFC ERGO General Insurance Company Ltd.,  
New No.528, Old No.529, 2<sup>nd</sup> Floor,  
Anna Salai, Teynampet,  
Chennai.

... Appellant

Vs.

1.Rayappan (Died)  
2. P.Rajendran  
3. R.Pushpa  
4. Arul Selvi  
5. Kilament John

... Respondents

*(Respondent No.1 died. Respondents 3 to 5 brought on record as Lrs of the deceased R1 viz Rayappan vide Court Order dated 08.06.2023 made in C.M.P.No.5159 of 2022 in C.M.A.No.2225 of 2021)*

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 13.03.2019 passed in M.C.O.P.No.321 of 2019 on the file of Motor Accidents Claims Tribunal (Additional District Judge – IV), Bhavani.

For Appellant : Mr.Somasundar  
For Respondents : Mr.K.V.Muthuvisakan for  
R3 and R4  
R1 – Died  
R2 – No Appearance  
R5- No such person



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### **JUDGMENT**

Aggrieved by the award passed by the Motor Accidents Claims Tribunal (Additional District Judge – IV), Bhavani. in M.C.O.P.No.321 of 2019 dated 13.03.2019, the appellant / insurance company has filed this appeal.

2. Brief facts are that on 26.02.2016 at about 5:30 P.M., when the first respondent / claimant was riding a two wheeler bearing Regn. No.TN 40 K 6635, at that time, another motor cycle bearing Regn.No.TN 40 J 6439 insured with the appellant / insurance company belonging to the second respondent driven by its driver who came in the very same direction in a rash and negligent manner and dashed the vehicle in which the claimant was riding, due to which, the claimant sustained grievous injuries all over the body. Alleging that the accident had occurred due to the rash and negligent driving of the driver of the second respondent, the first respondent / claimant has filed the claim petition claiming compensation of Rs.5,00,000/-.



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3. Before the Tribunal, the first respondent / claimant had examined P.W.1 and P.W.2 and marked Exs.P.1 to Ex.P.9. On the side of the appellant / insurance company, they have examined R.W.1 to R.W.3 and marked Exs.R1 to R3 and Court document was marked as Ex.C1 and the documents of the witness were marked as Ex.X1 to X.4. After adjudication, the Tribunal awarded a sum of Rs.2,90,638/- as compensation to the claimant to be payable by the appellant / insurance company and directed to pay and recover from the owner of the appellant's insured vehicle / second respondent, since its driver was not in possession of a valid driving licence. Challenging the same, the appellant / insurance company has preferred the present appeal.

4. The learned counsel appearing for the appellant / insurance company submits that though as per the FIR a case has been registered as against one Saravanan, however, the said Saravanan had not driven the offending vehicle, at the time of accident, during which time he was working as a Conductor in the Transport Corporation. However, erroneously, the said Saravanan was incorporated in FIR instead of one Ritheesh and in order to prove the same, the appellant has marked Ex.R3



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which is a reply under Right to Information Act, from the Transport Corporation in pursuance of the application made by the appellant Insurance company, in which it is clearly stated that R.W.2 Saravanan was employed as Conductor with the Tamil Nadu Transport Corporation, Coimbatore and it has also been stated that on the date of accident, he attended the duty as Conductor. Though, upon appreciating the aforesaid facts, the Tribunal has fixed the entire liability on the part of the appellant and ordered for pay and recovery which is per se unsustainable.

5. During the pendency of this writ petition, the first respondent / claimant died and their legal heirs were impleaded as respondents 3 to 5 vide order dated 8.06.2023 made in C.M.P.No.5159 of 2022 in C.M.A.No.2225 of 2021

6. The learned counsel appearing on behalf of the respondents 3 to 5 / legal heirs of the claimant submits that admittedly, R.W.2 namely Saravanan had driven the offending vehicle, at the time of accident and due to the rash and negligent driving of R.W.2 viz.Saravanan, the said accident happened. In order to prove the manner in which the accident



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had happened, the claimant examined himself as .P.W1, however, in order to disprove the same, no independent eye witness has been marked on behalf of the appellant / insurance company. The Tribunal upon appreciating the oral and documentary evidence has awarded the above compensation and has rightly ordered for pay and recovery, which does not require any interference.

7. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. Though the appellant / insurance company claims that the said Saravanan / driver of the offending vehicle had not driven the offending vehicle, at the time of accident, during which time he was working as a Conductor in the Transport Corporation, however, no documentary evidence was marked to prove the said fact. In the absence of any documentary evidence on the part of the appellant / insurer of the second respondent's vehicle, the Tribunal has rightly fixed the entire liability as against the appellant, which, in the opinion of this Court, is based on sound reasoning and hence, does not warrant interference. It is made clear that the pay and recovery ordered by the Tribunal is hereby confirmed.



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8. For the reasons aforesaid, this Appeal stands dismissed, confirming the award passed by the tribunal in MCOP.No.321 of 2021 dated 13.03.2019 and the appellant / insurance company is directed to deposit the compensation of **Rs.2,90,638/-** awarded by the tribunal to the credit of MCOP.No.321 of 2021 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the Tribunal is directed to transfer the said amount to the respondents 3 to 5 directly to their bank account through RTGS within a period of two (2) weeks thereafter. Out of the aforesaid compensation, the respondents 3 to 5 shall apportion the same in the ratio of 60:20:20 respectively. There shall be no order as to costs in this appeal.

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Index : Yes / No  
Netrual Citation Case : Yes / No  
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To

1. Motor Accidents Claims Tribunal (Additional District Judge – IV),  
Bhavani.
2. The Section Officer, V.R.Section, High Court, Madras.



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**M.DHANDAPANI, J.**

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