



C.M.A.No1508 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on : 24.09.2025

Pronounced on : 09.10.2025

CORAM:

THE HONOURABLE DR. JUSTICE **G.JAYACHANDRAN**
and
THE HONOURABLE MR. JUSTICE **MUMMINENI SUDHEER KUMAR**

C.M.A.No1508 of 2021

1.S.Ayswarya

2.T.S.A.Shanbagaraj

.. Appellants

Vs.

1.M.Balasubramanian

2.United India Insurance Co.Ltd.,
Motor Third Party Claims, Silingi Buildings,
3rd Floor, No.134,
Greens Road, Chennai 6.

.. Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow the claim in M.C.O.P.No.6613 of 2016 dated 13.02.2020, on the file of Motor Accident Claims Tribunal (Small Causes Court, Special Sub Judge No.1), Chennai as prayed for with interest and cost.

For Appellants : Mr.K.Varadha Kamaraj

For R1 : Steps not taken



C.M.A.No1508 of 2021

For R2 : Mr.D.Bhaskaran

WEB COPY

JUDGMENT

The claimants before the Motor Accident Claims Tribunal, Chennai, have preferred the present appeal being aggrieved by the dismissal of their claim petition.

2. According to the appellants, their daughter, the deceased Shruthi Lavanya, aged about 21 years, had completed her B.Tech and was pursuing M.Sc course. On 09.11.2015 while she was travelling on the pillion in a two wheeler bearing Registration No.TN 72 AK 2094. Thathianmoorthi, the two wheeler rider attempted to overtake a lorry bearing Registration No.KL 11 5349 and dashed the rear of the lorry. As a result, both the rider and Shruthi Lavanya were thrown off the vehicle. While Thathianmoorthi sustained minor injuries, Shruthi Lavanya, the pillion rider, sustained head injuries and was declared dead, when she brought to the hospital.

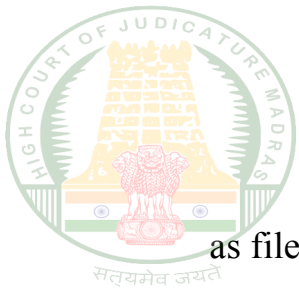
3. The appellants, being the parents of the deceased, filed a claim



C.M.A.No1508 of 2021

petition in M.C.O.P.No.6613 of 2016, before the Motor Accident Claims Tribunal(Small Causes Court, Special Sub Judge No.1), Chennai, seeking compensation of Rs.75,00,000/- for the death of their daughter attributing negligence on the part of the two wheeler rider and vicarious liability on the two wheeler owner (1st respondent) and its insurer (2nd respondent).

4. The 1st respondent remained absent. The 2nd respondent/insurance company filed a counter stating that the First Information Report (FIR) pertaining to the accident was registered by the police based on a complaint given by Thathianmoorthi, the rider of the two wheeler involved in the accident. In his complaint, Thathianmoorthi had stated that the lorry bearing Registration No.KL 11 5349, which was carrying a load of cement bags, was driven in a rash and negligent manner and dashed the rear of two wheeler. However, the claim petition was filed against the owner and the insurer of the two wheeler as if the two wheeler dashed the lorry. It was the case of the 2nd respondent that as per the FIR, the lorry driver was the actual tort-feasor. Therefore, the lorry owner and its insurer, who are the proper parties, not being impleaded, the claim petition



C.M.A.No1508 of 2021

as filed is not maintainable and is liable to be dismissed.

WEB COPY

5. The Tribunal framed the following points for consideration:-

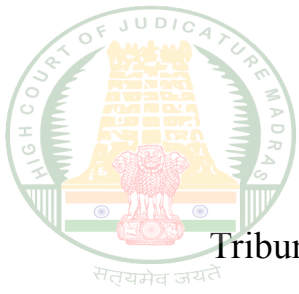
“(i) Whether this accident has occurred due to the rash and negligent riding of the rider of the Motorcycle bearing Registration No.TN 72 AK 2094?

(ii) Who is liable to pay the compensation

(iii) Whether the petitioner is entitled to compensation? And if so, what is the quantum?”

6. Before the Tribunal, on the side of the claimants, two witnesses were examined and 16 documents were marked as Ex.P1 to Ex.P16. On the side of the insurance company/2nd respondent one witness (RW.1) was examined and the copy of the set of documents relied by the prosecution in the accident case marked as Ex.R1. During the cross-examination of RW.1 by the claimants, the final report and Motor Vehicle Inspector's report were marked as Ex.P17 and Ex.P18 respectively.

7. On appreciation of both oral and documentary evidence, the



C.M.A.No1508 of 2021

Tribunal arrived at conclusion that the accident occurred due to the rash and negligent driving of the lorry bearing Registration No.KL 11 5349. The said lorry owner is the proper party to pay compensation. Hence, the Tribunal held that the claimants are not entitled to get compensation from the owner and the insurer of the two wheeler. As a result, the claim petition was dismissed.

8. In the appeal, the claimants/appellants contend that the Tribunal ought not to have dismissed the claim petition by relying the FIR [Ex.P1] and the evidence of RW.1. The first informant namely Thathianmoorthi, who is the author of Ex.P1, was not examined, contrarily, the claimants had examined one Iyyappan [PW.2], who is an eye witness to the occurrence. He has categorically deposed that the accident occurred due to the rash and negligent driving of the two wheeler rider and not due to any fault on the part of the lorry driver. The appellants further contend that the Tribunal's findings are contrary to the dictum laid down by the Hon'ble Supreme Court in the following cases;

- ***National Insurance Company Limited Vs. Chamudeswari and***



C.M.A.No1508 of 2021

WEB COPY

others reported in **2021(2) TN MAC 449 (SC)**

Pawan Kumar and another etc., Vs. Harkishan Dass Mohan Lal and others reported in **2014(1) TN MAC 321 (SC)**.

The Tribunal, by ignoring the evidence of PW.2 had given undue weight to the FIR [Ex.P1] while dismissing the claim petition. Therefore, the learned counsel for the appellants submitted that the appeal should be allowed and adequate compensation to be awarded to the claimants/appellants.

9. The learned counsel appearing for the Insurance Company submitted that the FIR is the earliest document in this case. The police on investigation found that the lorry driver, who had caused the accident, is not traceable. While so contrary to FIR [Ex.P1] and Final Report [Ex.P.17] for the sake getting compensation, a contrary plea taken by the claimants fixing negligence on the two wheeler rider.

10. The Tribunal, after considering the documentary evidence, has found that the oral evidence of PW.2 is unbelievable since it is contrary to the documentary evidence. The FIR categorically alleged negligence on the



C.M.A.No1508 of 2021

part of the lorry driver, who fled the accident scene and remained untraced in spite of due investigation. Hence the final report laid as against the lorry driver showing him as untraceable. The claimants relied upon the evidence of PW.2, who claims to be the eye witness to the occurrence. However, during cross-examination, it has been established that PW.2 had been engaged by the claimants to give false evidence.

11. A reading of the portion of the cross-examination, where the witness namely PW.2 has fumbled and not able to produce even basic documents to substantiate his alleged presence at the place of occurrence, the Tribunal rightly dismissed the claim petition.

12. The learned counsel for the respondent further submitted that in a similar circumstances, the Division Bench of this Court had declined to entertain claim petitions, where the evidence, the alleged eye witness contrary to FIR was found to be unreliable. In support of this contention, he rely on the following judgments:

- ***United India Insurance Company Limited Vs. D.Hemavathy and***



WEB COPY



C.M.A.No1508 of 2021

others reported in **2017(2) TN MAC 115(DB)** and
United India Insurance Company Limited Vs. Suseela Jothi Mary
reported in **2020(2) TN MAC 455 (DB)**

13. Heard the learned counsels appearing on either sides.

14. This is a case of road accident, in which a 21 years old woman died. The claimants in this case are the mother and father of the deceased. At the time of her death, the deceased was a B.Tech decree holder and was pursuing her M.Sc (BTFS). She was a resident of Chennai and had gone to Tirunelveli by train to her relative house on a festival day. On her arrival, Thathianmoorthi, had picked her from the railway station in his two wheeler. Unfortunately on the way to home, the accident had occurred.

15. The earliest document in this case is the complaint filed by Thathianmoorthi, the two wheeler rider. In his complaint he had specifically attributed rash and negligent driving on the part of the lorry driver bearing Registration No.KL 11 5349, carrying cement bags, which hit the rear of the two wheeler.



C.M.A.No1508 of 2021

WEB COPY

16. In the complaint, it is specifically states that the said lorry hit and run away. Shruthi Lavanya sustained head injury. Immediately Thathianmoorthi called his relative Madhusudan and arranged for a private ambulance. The injured was taken to the hospital in the private ambulance where she was declared “brought dead”.

17. During the police investigation, it was found that the version given by Thathianmoorthi was credible. Since the lorry could not be traced, they have closed the complaint as “not traceable”.

18. RW.1, the Sub Inspector from the Traffic investigation wing, was examined before the Tribunal. On perusal of the records, he had deposed that as per the FIR and the investigation, the accident was caused due to the rash and negligent driving of the lorry driver. However, in their claim petition, the claimants put forth a contradictory version alleging that the two wheeler rider was at fault.

19. To substantiate this contrary claim, one Iyyappan [PW.2] has



C.M.A.No1508 of 2021

been examined. However, his presence at the scene of occurrence was not reflected either in the FIR or in the accident register maintained by the hospital. Despite this PW.2 claimed that he was in the Tea shop near the place of accident and saw the accident.

20. According to PW.2, the two wheeler rider drove rash and negligently, while attempting to overtake the lorry, dashed the rear of the lorry, thereby caused the accident. The prime contradiction noted between the FIR and the evidence of PW.2 are :

(i) The FIR given by the rider of the two wheeler states that the lorry hit the back of the two wheeler rash and negligently. Whereas, PW.2 had deposed that the two wheeler hit the rear of the lorry while trying to overtake.

(ii) The FIR states that the injured was taken to the hospital in a private ambulance by the first informant Thathianmoorthi and his relative Madhusudan. Whereas, PW.2 had deposed that he along with his friend Perumal took the injured to the hospital in a 108 ambulance.



C.M.A.No1508 of 2021

WEB COPY

21. The appellants placed reliance on the judgment In ***National Insurance Company Limited Vs. Chamudeswari and others*** reported in ***2021(2) TN MAC 449 (SC)***. In that case, though the FIR mentioned that the accident occurred due to the negligence of the car driver, who died in the accident, one of the occupants of the car deposed that the accident occurred due to the van moving before the car suddenly turning right without any signal or indicator.

22. In the said facts and circumstances, the Hon'ble Supreme Court gave primacy to the evidence of an occupant, who was present in the car which met with an accident, as against the FIR given by a third party. Whereas, in this case, PW.2's presence in the scene of accident is itself doubtful and there is no corroboration. The claimants have conveniently failed to examine Thathianmoorthi or Madhusudan who are the most competent witnesses to speak about the accident and further incident. Iyyappan [PW.2], who had been introduced by the claimants, unable to provide information about Perumal, whom he claims as the person accompanied him to the hospital and arranged for his travel to Chennai to



C.M.A.No1508 of 2021

given evidence.

WEB COPY

23. Similarly, in the case of *Pawan Kumar* cited supra and relied by the appellants, the Hon'ble Supreme Court has found that in a head-on collusion, where both the truck and jeep drivers were found to be equally negligent, the dismissal of the claim petition, which had been filed only against the jeep owner and its insurer, without impleading the owner of the truck owner and its insurer is bad in law. In cases of contributory negligence, it is improper to apportion liability between vehicles without impleading all negligent parties. The Apex Court held that the owners and drivers of both vehicles are to be held jointly and severally liable to pay compensation, when contributory negligence is proved.

24. Contrary to the facts in *Pawan Kumar* case, in the present case, it is not the claimants plea that the accident occurred due to contributory negligence of both the lorry driver and the two wheeler rider. The specific case of the claimants is that the accident occurred solely due to rash and negligent driving of the two wheeler rider.

25. The documentary evidence indicate the accident was caused by



C.M.A.No1508 of 2021

the lorry driver. However, the owner and its insurer had not been impleaded as respondents, the Tribunal has rightly dismissed the claim petition. The Division Bench of this Court in ***Suseela Jothi Mary*** case and ***D.Hemavathy and others*** has held that where the FIR and charge sheet implicate the lorry driver, merely based on the oral evidence of a witness whose presence at the scene of occurrence is highly doubtful, fix liability on the two wheeler rider and its insurer.

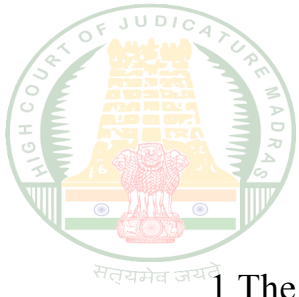
26. Therefore, on considering the facts of the case, this Court holds that the Tribunal had rightly dismissed the claim petition. The grounds of appeal are both legally and factually unsustainable. Hence, the Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

[Dr.G.J., J.] & [M.S.K., J.]
09.10.2025

Index :Yes/No.
Speaking order/non speaking order
Neutral citation :Yes/No.
rpl

To

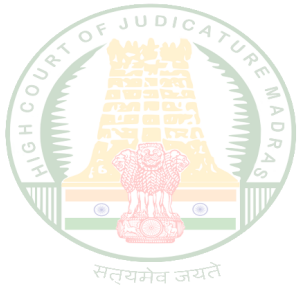
13/15



C.M.A.No1508 of 2021

1.The Motor Accident Claims Tribunal (Small Causes Court, Special Sub Judge No.1), Chennai.

2.The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



WEB COPY



C.M.A.No1508 of 2021

Dr.G.JAYACHANDRAN., J.
and
MUMMINENI SUDHEER KUMAR., J.

rpl

Judgment in
C.M.A.No1508 of 2021

09.10.2025