



CMA.No.1480 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 21.03.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.No.1480 of 2021
and CMP.No.7749 of 2021

New India Assurance Company Limited,
Sethu Krishna Trade Centre,
2nd Floor, 133/31-1, Trichy Main Road,
Salem – 637 301.

... Appellant

Vs.

1.P.P.Rajavel
2.R.Narayanasamy
3.The Oriental Insurance Company Limited,
Divisional Office, Divya Towers,
Shevapet Main Road, Salem – 636 002.
4.P.Punitha
5.Minor P.Kavipriya
6.S.Seethalakshmi

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the judgment and decree dated 16.03.2020, passed in MCOP.No.2573 of 2016, by the Motor Accident Claims Tribunal Special District Judge, Salem.

For Appellant	: M/s.S.R.Sumathy
For Respondents	: Mr.C.Prabakaran
	for R4 to R6
	Mr.J.Chandran for R3
	No Appearance for R1
	Not ready in Notice for R2



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J U D G M E N T

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This Civil Miscellaneous appeal has been filed challenging the award passed by the Principal District Judge, Motor Accident Claims Tribunal, Salem.

2. For the sake of convenience, the parties are referred as per their ranks in the claim petition.

3. It is the case of the claimant that on 01.04.2016, the deceased was driving a Scorpio Car in Edappadi to Omalur Main Road, when he came near Ettikuttai Medu Petrol Bunk, a lorry belonged to the first respondent insured with the second respondent came in the opposite direction in a rash and negligent manner and dashed against the Scorpio car on the right hand side. At the same time, the Tata Sumo Car belonged to the 3rd respondent insured with the 4th respondent which came behind the lorry, in order to avoid the collision with lorry, turned to its right and hit against the Scorpio Car. In the accident, the husband of the first claimant, father of the second claimant and son of the 3rd claimant namely Parthasarathi died. The claim



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petition was filed by the claimants seeking quantum of compensation of

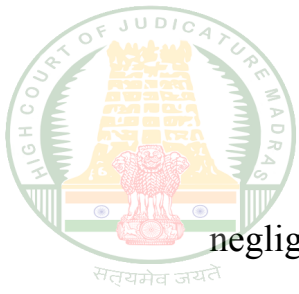
Rs.25,00,000/-.

4. The owner of the lorry and the owner of the Tata Sumo vehicle namely the 1st and 3rd respondents remained ex-parte before the Tribunal. The claim petition was contested by the respondents 2 and 4 insurers of lorry and Tata Sumo vehicle.

5. It was stated by the second respondent that the accident had occurred only due to the rash and negligent driving of the Scorpio Car by the deceased. The second respondent also stated that the driver of the Tata Sumo Car, which came later also was responsible for accident.

6. The 4th respondent filed counter stating that the accident had occurred due to the rash and negligent driving of the driver of the lorry and there was no negligence on the part of the driver of the Tata Sumo Car.

7. The Tribunal based on the evidence available on record came to the conclusion that the accident had occurred only due to the rash and



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negligent driving of the lorry insured with the second respondent and hence passed the award directing the respondents 1 and 2 to pay the compensation of Rs.13,30,000/-. Aggrieved by the same, the second respondent before the Tribunal namely, the insurer of the lorry has come by way of this appeal.

8. The learned counsel appearing for the appellant would submit that though initially the lorry dashed against the Scorpio car driven by the deceased, the Tata Sumo Car, which came behind the lorry turned to its right and hit against the Scorpio car. Therefore, the Tribunal ought have fixed contributory negligence on the part of the driver of the Tata Sumo car.

9. The learned counsel appearing for the claimants as well as 4th respondent insurer of the Tata Sumo vehicle based on the evidence of PW.3 and contents of FIR submitted that the Tribunal was justified in fastening the negligence on the part of the driver of the lorry.

10. PW.3 is the eye witness to the accident, who travelled along with the deceased in Scorpio car. He clearly deposed that the accident had occurred only due to the rash and negligent driving of the lorry. His



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evidence is very well corroborated by contents of FIR, which was filed against the driver of the lorry. On behalf of the respondents, the driver of the lorry was examined as RW.1. He in his evidence deposed that the accident had occurred only due to the negligence on the part of the deceased. He had not stated anything about the negligent driving by Tata Sumo car. In these circumstances, the submission made by the learned counsel appearing for the appellant regarding the contributory negligence of the driver of the Tata Sumo car is not supported by evidence of lorry driver, who was examined as RW.1. The Tribunal by taking into consideration, evidence of PW.3, the contents of FIR and final report which was also filed against the lorry driver rightly came to the conclusion that the entire negligence was on the part of the driver of the lorry.

11. In the claim petition, it was stated by the claimants that the deceased was a driver and was earning a sum of Rs.25,000/- per month. However, they failed to furnish any documentary evidence to establish the income of the deceased. Taking into consideration the date of accident and the cost of living, the Tribunal fixed the notional income at Rs.11,250/- and fixed loss of dependency at Rs.12,60,000/- which is reasonable in the



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absence of any independent appeal or cross appeal by claimant. The other amount awarded by the Tribunal under various other heads are in accordance with ***Pranay Sethi*** Case.

12. Therefore, I do not find any reason to interfere with the quantum of compensation awarded by the Tribunal and accordingly, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.03.2025

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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To
1.The Motor Accident Claims Tribunal
Special District Judge, Salem.

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



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S.SOUNTHAR, J.
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