



C.M.A.No.1957 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 28.01.2025

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.No.1957 of 2020
and C.M.P.No.14458 of 2020

Royal Sundaram Alliance Insurance Co. Ltd.,
Branch Office,
No.320, 2nd Floor, Muthu Plaza,
Avinasi Road, Tiruppur-641 602.

... Appellant/1st Respondent

-VS-

1. Mrs.P.Renuka Devi

2. Minor P.Yogesh

3. Mrs.K.Mayilathal

... Respondents 1 to 3/Petitioners

4. Ilangovan

... 4th Respondent/2nd Respondent

5. R.Rajthilak

... 5th Respondent/3rd Respondent

6. The Branch Manager,

The New India Assurance Co.Ltd.,

No.47, Shopping Complex,

Kumaran Road, Tiruppur.

... 6th Respondent/4th Respondent

(Minor represented by its mother and
guardian & next friend P.Renukadevi)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 20.11.2019 passed in M.C.O.P.No.889 of 2016 on the file of the Special District Court-cum-Motor Accident Claims Tribunal, Tiruppur.

For Appellant : Mr.G.Vasudevan



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For R1 to R3 : Mr.J.Franklin
For R4 & R5 : No Appearance
For R6 : Mr.K.Vinod

ORDER

(By *J.Nisha Banu,J.*)

Feeling aggrieved by the Award dated November 20, 2019 passed in M.C.O.P.No.889 of 2016 on the file of the Special District Court-cum-Motor Accident Claims Tribunal, Tiruppur (in short 'Tribunal'), the appellant / Insurance Company preferred this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties herein are referred to as per their array in the Tribunal.

Brief facts put forth by the petitioners/claimants

3. On April 1, 2016 at about 06.30 p.m., while the deceased – Paneerselvam was travelling in a TATA Indigo Car bearing Regn.No.TN-39-AE-8336, driven by one Ravikumar, who is the owner of the vehicle and he also died in the accident, while travelling on Kovai-Salem National Highways No.47 near Avinashi Pazhakari Maharaja Mill, a lorry bearing Regn.No.TN-30-BY-7751 was moving ahead of their car in same direction,



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at that time, the said Ravi drove the car in a rash and negligent manner and dashed the rear side of the lorry, that was insured with the 6th respondent herein. According to the petitioners/claimants, who are the wife, minor son and mother of the deceased, the accident occurred only due to the rash and negligent driving of the owner of the car, in which the deceased travelled. Before the Tribunal, the 1st respondent – insurer of the Car, the 2nd respondent - driver of the lorry, the 3rd respondent - owner of the lorry and 4th respondent – insurer of the Lorry, were arrayed as the respondents. At the time of accident, the deceased was aged about 35 years and he was a Carpentry Contractor and was earning a sum of Rs.20,000/- per month. Stating that the Car was insured with the 1st respondent – insurance company and the accident occurred due to the careless driving of the deceased car owner, the petitioners/claimants filed the Claim Petition before the Tribunal seeking compensation of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) along with interest and costs from the 1st respondent – insurance company.

The case of the 1st Respondent in the counter



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4. There was no negligence on the part of the owner-cum-driver of the car bearing Regn.No.TN-39-AE-8336, who had driven the car by following all the traffic rules and it was the driver of the lorry, who was rash and negligent in driving and caused the accident. In the absence of proof of negligence on the part of the driver of the car, the 1st respondent is not liable to pay compensation to the petitioners/claimants. Further, the petitioners/claimants have to prove the age, income and occupation of the deceased. Stating that the amount of compensation claimed is unsustainable and excessive, the 1st respondent prayed to dismiss the claim petition.

The case of the 4th Respondent in the counter

5. The allegation levelled against the driver of the lorry that he suddenly stopped the lorry without any signal is denied and as per the version in the FIR and charge sheet, the driver of the car is responsible for the accident. The 4th respondent – insurance company is not liable to pay any compensation to the petitioners/claimants, as the claim petition was filed, seeking compensation only from the 1st respondent and hence, prayed for dismissal of the claim petition as against the 4th respondent.



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5. Before the Tribunal, petitioners 1 & 3 were examined as

P.Ws.1 & 3 and an eye witness to the occurrence, namely, S.Yuvaraj was examined as P.W.2 and Ex.P1 to Ex.P15 were marked. On the side of the 1st respondent, one witness, namely, Vaitheeswaran was examined and no document was marked. One Venkatasubramaniam was examined by the 2nd respondent and a document was marked as Ex.R1 by the 4th respondent / insurance company.

6. The Tribunal, after considering the evidence available on record, held that the accident had occurred on account of the fault on the part of the driver of the car. Accordingly, the Tribunal held that the 1st respondent / Insurance Company, being insurer of the car, is liable to pay the compensation to the petitioners/claimants.

7. With regard to quantum of compensation, on the basis of the Income Tax Return (ITR-5) of the year 2014-2015 just prior to the accident, the income of the deceased was derived as Rs.2,04,800/- and he had also paid tax for the said amount, which had been duly proved through Ex.P11.



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Therefore, the Tribunal had taken the said amount as the yearly income of the deceased. The Tribunal, upon considering the age of the deceased, adding 40% towards future prospects, applying multiplier of 15 as per the judgment of the Hon'ble Supreme Court in **Sarla Verma and Others vs. Delhi Transport Corporation and another**, reported in **2009 (6) SCC 121**, and deducting 1/3rd toward personal expenses, computed the compensation as stated below:-

Sl.No.	Head	Amount
1.	Loss of income (Rs.2,04,800+40% $\times$ 15-1/3)	Rs.28,67,205/-
2.	Loss of Estate	Rs.15,000/-
3.	Loss of Consortium	Rs.40,000/-
4.	Funeral Expenses	Rs.15,000/-
	Total	Rs.29,37,205/-

8. Feeling aggrieved by the quantum of compensation awarded by the Tribunal, the 1st respondent / insurance company has preferred this appeal.

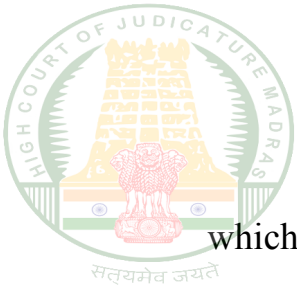
9. Learned counsel for the appellant/insurance company would submit that the Tribunal erred in fastening the responsibility on the 1st respondent despite the fact that the accident had occurred due to the rash and negligent driving of the driver of the lorry. Though the P.W.2 stated that both the drivers are responsible for the accident, the entire liability fixed on



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the appellant is *per se* illegal. Hence, learned counsel for the appellants prays to allow this appeal, stating that the quantum awarded by the Tribunal is excessive as against the claim made by the petitioners/claimants to the tune of Rs.25,00,000/-.

10. Per contra, learned counsel appearing for the insurance company / R6 herein contended that the dependents of Ravikumar, who had driven the car, which is the subject matter of this appeal and caused the accident, filed a Claim Petition in MACTOP No.813 of 2016, in which, the Tribunal awarded a compensation of Rs.11,53,750/- to the claimants therein. Aggrieved by the said award, the insurance company / R6 herein (insurer of the lorry) preferred an appeal before this Court, wherein the appeal filed by the Insurer of the lorry / R6 herein, was partly allowed by this Court on 07.07.2022, awarding a sum of Rs.50,000/- as compensation in terms of Section 140 of the Motor Vehicles Act, by referring to the judgment of the Supreme Court in the case of Nishan Singh and others vs. Oriental Insurance Co.Ltd. and others, reported in 2018 (1) TN MAC 745 (SC). He further contended that thus, it is clear that Ravikumar / Driver of the car,



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which is insured with the appellant herein alone was responsible for the accident. Therefore, there is no reason to interfere with the findings with respect to quantum awarded by the Tribunal. In absence of any infirmity or illegality in awarding the amount of compensation, no interference is warranted and the appeal is liable to be dismissed.

11. Heard the learned counsel on either side and perused the evidence and materials available on record.

12. The appellant / insurance company failed to examine the driver of the lorry. Once the claim petition was filed by the petitioners, alleging that the driver of the car was responsible for the accident, the burden of proof lies on the appellant insurance company to establish that the accident had occurred on account of the mistake committed by the driver of the lorry. Moreover, the FIR was registered against the driver of the car, who also died in the accident. His name was found place in the charge sheet. As per the evidence of PW2, the driver of the car was also equally responsible for the accident. Therefore, the Tribunal came to the conclusion that the



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accident had occurred due to rash and negligent driving of the driver of the car.

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13. Moreover, this Court, by its order dated 07.07.2022 (supra) clearly held that the driver of the car failed to maintain the distance and collided on the rear side of the lorry. Since the driver of the car himself was a tortfeasor and responsible for accident, the claim petition filed by his dependents was negatived in appeal. This Court finds no reason to take a contrary view to hold that the driver of the lorry was responsible for the accident, in the absence of any evidence to that effect. Hence, this Court is of the view that the appeal filed by the insurance company is liable to be dismissed.

14. Accordingly, this Civil Miscellaneous Appeal is dismissed.

No costs. Consequently, connected Miscellaneous Petition is closed.

(J.N.B.J.) (R.S.V,J.,)
28.01.2025

Index: Yes / No
Internet: Yes / No
Speaking Order/ Non Speaking Order
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AND
R.SAKTHIVEL,J.,
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To:

Motor Accident Claims Tribunal /
Special District Judge,
Tiruppur.

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