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C.M.A.No.638 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.06.2025
Pronounced on	30.06.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.638 of 2022

1. Manivel

2. Kalaiarasi

...Appellants

Vs.

1. Pichaiammal

(R1 already set ex parte in Lower Court)

2. ICICI Lombard General Insurance Company Limited

ICICI Lombard House,

414, Veer Savarkar Marg,

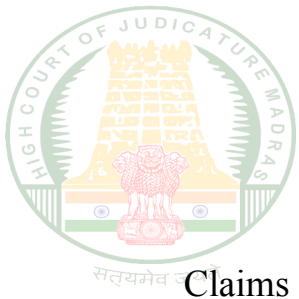
Near Siddi Vinayak Temple,

Prabhadevi,

Mumbai 400 025

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, praying to set aside the Judgment and decree dated 06.12.2018 made in MCOP No.239 of 2015 on the file of the Motor Accident



C.M.A.No.638 of 2022

Claims Tribunal cum Principal District Judge, Perambalur and enhance the compensation amount awarded to the petitioners.

For Appellants : Ms.V. Pushpalatha
For Respondents : Ms.R. Sree Vidhya for R2
R1 - *Ex parte*

JUDGMENT

The present appeal is preferred against the judgment and decree dated 06.12.2018 passed by the Motor Accident Claims Tribunal cum Principal District Judge, Perambalur, in M.C.O.P. No.239 of 2015, whereby the claim petition was allowed and a sum of Rs.50,000/- was awarded for the death of the claimants' son.

2. The facts leading to the case in brief are as follows:

2.1. The deceased Velmurugan was riding a two wheeler (Pulsar) bearing Registration No.TN 09 BK 2422, belonging to the 1st respondent and insured with the 2nd respondent (Policy No.3005 / 2010480959 / BO /0000007647 period from 1/10/14 to 30/9/15), along with his friends Sridar



C.M.A.No.638 of 2022

WEB COPY

and Ravikumar as pillion riders. He was proceeding from Azoor to Kunnam slowly and carefully on the left side of the road and when he was nearing M.T.S Kalyana Mandabam, Kunnam, he lost his control and dashed against a tamarind tree. As a result of which, the deceased Velmurugan and the pillion riders were thrown out and died on the spot. The postmortem was done at G.H. Perambalur. A case has been registered in Cr.No.31/15 under Section 304(A) IPC in Kunnam Police Station, Perambalur District. The deceased Velmurugan was a 2nd year DCE student.

2.2. The parents of the deceased Velmurugan filed a Claim Petition before the Tribunal in M.C.O.P. No.239/2015 and the legal heirs of the deceased Sridhar and Ravikumar (pillion riders) filed claim petitions in M.C.O.P. Nos. 237 and 238 of 2015 respectively, claiming compensation of Rs.20,00,000/- each.

2.3. The Tribunal, by an Award dated 06.12.2018, had proceeded to hold that the deceased Velmurugan, the rider of the motorcycle, alone was responsible for the accident and awarded a sum of Rs.50,000/- to the



C.M.A.No.638 of 2022

WEB COPY

petitioners in M.C.O.P. No.239/2015 to be paid from the Solicitor Fund.

However, the Tribunal awarded a sum of Rs.8,43,480/- as compensation for the pillion riders in the motorcycle, in M.C.O.P. No.237/2015 and M.C.O.P. No.238/2015 respectively.

3. Challenging the said Award, the claimants (parents of the deceased Velmurugan) in M.C.O.P. No.239/2015 have preferred the present appeal.

4. Ms. V. Pushpalatha, learned counsel appearing for the appellants/claimants would submit that the alleged accident took place only due to the sudden crossing of a cattle and there is no negligence on the part of the rider of the vehicle. She further submits that the Tribunal ought to have awarded equal compensation to the appellants like the other claimants in M.C.O.P. Nos.237 and 238 of 2015 and prays for enhancement of compensation to the appellants.

5. Despite notice, the first respondent remained *ex parte*.



C.M.A.No.638 of 2022

WEB COPY

6. Ms.R. Sree Vidhya, learned counsel for the second respondent/Insurance Company submits that the deceased Velmurugan was the rider of the motorcycle at the time of the accident and the same has been established by the oral and documentary evidence. Since the deceased Velmurugan was a tortfeasor, the appellants/claimants are not entitled for any compensation.

7. From a perusal of Ex.P1 (FIR dated 17.01.2015) and Ex.P8 (Postmortem Report) it is clear that the deceased Velmurugan was the rider of the motorcycle at the time of accident and he succumbed to injuries sustained by him in the accident. Therefore, the deceased being a tortfeasor, the appellants/claimants are not entitled to any compensation. The Tribunal has held that the alleged accident took place due to the negligent act of the deceased Velmurugan and awarded a sum of Rs.50,000/- from the Solicitor Fund. There is no infirmity or perversity in the order passed by the Tribunal.



C.M.A.No.638 of 2022

WEB COPY
costs.

8. In the result, the Civil Miscellaneous Appeal is dismissed. No

30.06.2025

bga

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

To

1. The Motor Accident Claims Tribunal cum Principal District Judge,
Perambalur.
2. The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



C.M.A.No.638 of 2022

K.GOVINDARAJAN THILAKAVADI, J.

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Pre-delivery Judgment made in

C.M.A.No.638 of 2022

30.06.2025