



CMA.No.1805 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :18.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.1805 of 2021 and
C.M.P.No.9750 of 2021

Shriram General Insurance Company Limited
E-8, EPIP, RICCO, Sitapura,
Jaipur, Rajasthan-302022

... Appellant

Vs.

1. Saradha
2.Minor M.Sivakumar
3.Minor M.Sowndarya
4.Masthamma
5.Krishna
6.Kannan

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 praying to set aside the decree and judgment dated 03.11.2018 made in MCOP.No.389 of 2013 on the file of Motor Accidents Claims Tribunal(Sub-Court), Sathyamangalam.

For Appellant : Mr.S.Dhakshnamoorthy

For respondents : M/s.S.Darshini for R1 to R3

for M/s.K.Moorthy

R4-Unserved

R5 & R6- Notice dispensed with



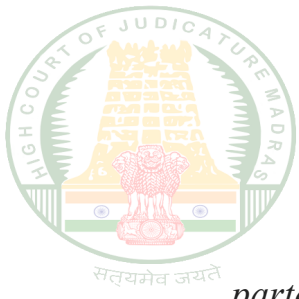
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JUDGMENT

The Civil Miscellaneous Appeal is filed by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal in MCOP No. 389 of 2013 awarding a compensation of Rs. 15,52,000/- in favour of respondents 1 to 4.

2. It is the case of the claimants that on 15-09-2012, the husband of the first claimant, the father of the claimants 2 and 3 and son of the 4th claimant namely Mahadevu alias Mahadeva was proceeding in his bike bearing registration number TN 37 BS 1294 on road near Karapallam. A eicher van bearing registration number TN-28 AF 3588, driven by the 5th respondent, owned by the 6th respondent and insured with the appellant, came in the opposite direction in a rash and negligent manner and hit against the two-wheeler driven by the deceased. As a result of which, the deceased was thrown out of his vehicle and sustained fatal injuries. The claimants filed the claim petition seeking compensation of Rs.25,00,000/-. The driver and the owner of the eicher van namely 5th and 6th respondents remained *ex-*



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parte. The claim petition was contested by the appellant/ Insurance Company by filing counter. It was the case of the appellant that the accident had occurred only due to the negligence of the deceased when he attempted to overtake a van proceeding in front of his vehicle. The Appellant/ Insurance Company also relied on the final report filed by the police wherein the case was closed as 'mistake of fact'.

3. Before the Tribunal, the 1st claimant was examined as PW1 and two eyewitnesses were examined as PW2 and PW3. The Motorcycle Inspector was examined as PW4. On behalf of the claimants, 15 documents were marked as Exhibit P1 to Exhibit P15. On behalf of the respondents, no witness was examined and no documents were marked. The final report filed by the police was marked as Exhibit C1.

4. The Tribunal, on appreciation of evidence available on record, came to the conclusion that accident had occurred only due to the rash and negligent driving of the driver of the vehicle insured with the appellant. The Tribunal fixed compensation payable to the claimants at Rs.15,52,000/-. Aggrieved by the same, the appellant/insurance



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company has come before this court by way of this appeal.

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5. The learned counsel for the Appellant/ Insurance Company submitted that after investigation, the police came to the conclusion that accident had occurred only due to the negligence of the deceased and filed final report to that effect. The final report filed by the police was marked as Exhibit C1. According to him, the Tribunal erred in ignoring the final report and fixing liability on the insurance company. Though the learned counsel for the appellant assailed the findings of the Tribunal on the ground of negligence, he has not advanced any arguments disputing the quantum of compensation arrived at by the Tribunal.

6. The learned counsel for the respondents 1 to 3/claimants, by relying on evidence of PW2 and PW3, submitted that Tribunal rightly came to the conclusion that the accident had occurred due to the negligence on the part of the 5th respondent, driver of the vehicle insured with the appellant.



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7. In order to prove the negligence aspect, the claimants examined two eyewitnesses namely PW2 and PW3, who proceeded in a vehicle behind the vehicle driven by the deceased. The informant was examined as PW2, the pillion rider of the vehicle driven by PW2 has been examined as PW3. A perusal of the evidence of PW2 and PW3 would suggest that the accident had occurred only due to the rash and negligent driving of the fifth respondent, the driver of Eicher van. The evidence of PW2 and PW3 are complementary to each other and they also withstood the cross-examination. Merely because PW2 and PW3 are relatives of the deceased, their evidence cannot be discarded when they withstood the cross-examination by the appellant/insurance company.

8. The learned counsel for the appellant vehemently contended that Exhibit C1, final report filed by the Police, would indicate that the deceased fell down from the vehicle and thereafter, the vehicle dragged to right side and hit against the vehicle insured with the appellant. Though in the final report the criminal case registered by the police based on the information given by PW2 was closed, the RCS notice



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issued to the informant has not been filed along with Exhibit C1. When there is no evidence available on record to show that after issuing notice to the informant, the final report was accepted by the criminal court, the evidence of PW2 and PW3 recorded before the Tribunal, who also withstood the cross-examination can not be discarded. Therefore, this court comes to the conclusion that the Tribunal rightly fixed negligence on the part of the 5th respondent by relying on evidence of eyewitnesses PW2 and PW3. The said finding of the Tribunal requires no interference. Since no arguments are advanced on the question of quantum, the amount of compensation fixed by the Tribunal is confirmed. Accordingly, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

18.02.2025

Index: Yes/No
Internet: Yes/No
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To



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1. Motor Accident Claims Tribunal,
Sub-Court , Sathyamangalam.
2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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