



C.M.A.No.417 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.No.417 of 2018
and C.M.P.No.3764 of 2018
and**

C.M.P.No.15103 of 2024 in Cros.Obj.SR.No.59721 of 2024

Prayer in C.M.A.No.417 of 2018

The Divisional Manager,
The New India Assurance Company Limited,
No.42, Big Street,
Thiruvannamalai.

... Appellant

Vs.

Annamalai (Died)

1.Jothi

2.Jayanthi

3.Menaga



C.M.A.No.417 of 2018

4.Mani

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.11.2016 made in M.C.O.P.No. 879 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.F.Terry Chella Raja
for R1 to R3
No appearance for R4

Prayer in C.M.P.No.15103 of 2024

Annamalai (Died)

1.Jothi

2.Jayanthi

3.Menaga

... Appellants

Vs.

1.The Divisional Manager,
The New India Assurance Company Limited,
No.42, Big Street,
Tiruvannamalai.



C.M.A.No.417 of 2018

2. Mani

... Respondents

PRAYER : Civil Miscellaneous Petition filed under Section 5 of Limitation Act, to condone the delay of 2244 days in filing the cross appeal against the award dated 18.11.2016 made in M.C.O.P.No.879 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub-Judge (M.C.O.P), Thiruvannamalai District.

For Petitioners : Mr.F.Terry Chella Raja

For Respondents : Mr.J.Chandran for R1

COMMON JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the judgment and decree dated 18.11.2016 passed in M.C.O.P.No.879 of 2013 by the Motor Accident Claims Tribunal, Special Sub Court, Thiruvannamalai District.



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2. According to the claimants/respondents 1 to 3 herein, the deceased, Ramachandiran, was working as cleaner under the fourth respondent in the Tipper Lorry bearing Registration No.TN 31 8238 insured with the appellant/Insurance Company. On 23.05.2012 at about 06.30 a.m., as per the instructions of the driver of the fourth respondent, the deceased was applying grease to the said lorry, when the lorry was parked near Pachatha Kalmalai, Periyakolapadi Village, at Tiruvannamalai to Chengam Road, without putting any obstruction in the wheels. While so, the gear of the lorry got slipped and the lorry went forward unmanned, due to which, the deceased who was applying grease under the lorry was run over by the lorry and he was taken to the hospital, however, he died on the way to the hospital. Thereby, the claimants have filed a claim petition before the Tribunal and the Tribunal awarded a sum of Rs.11,78,000/- in favour of the claimants and directed the appellant/Insurance Company to pay compensation in favour of the claimants. Challenging the same, this appeal has been filed.



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3. The learned counsel appearing for the appellant submits that the accident occurred due to reckless act of the deceased and without taking any safety precautions, he performed the work under the lorry and since the accident occurred during the course of employment, the petition under Section 166 of the Motor Vehicles Act will not be maintainable and the driver was not available at the time of accident. It is the duty of a cleaner to put wooden logs or other material in wheels to avoid the movement of the vehicle. In support of his contention, he relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Kalim Khan and others vs. Fimidabee and others*** reported in ***CDJ 2018 SC 695***, wherein it has been held that the casual relationship should exist between violation and the accident caused. In the present case, the deceased himself invited the accident, without taking any precautionary measure while applying grease to the lorry and the driver of the lorry was not available. Hence, Sections 165 and 166 of the Motor Vehicles Act are not applicable to this case.



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However, the Tribunal entertained the claim petition filed by the claimants under Section 166 of the Motor Vehicles Act and awarded compensation which is not sustainable one. Hence, he prays for allowing this appeal.

4. The learned counsel appearing for the respondents/claimants submits that the claim petition under Section 166 of the Motor Vehicles Act is very much maintainable in terms of Section 165 of the Motor Vehicles Act, since the accident had occurred while he was using the fourth respondent's vehicle and the said issue was properly adjudicated by the Tribunal. Hence, he prays for dismissal of this appeal.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 3.



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6. Admittedly, the deceased was working as cleaner under the fourth respondent and on the date of the accident, the lorry was kept parked in a sloped area and the lorry was parked without putting any obstructionable material so as to stop the vehicle from moving forward. The deceased, without ascertaining the safety of the lorry, had gone under the lorry to apply grease without taking precautionary measure and during that time, the vehicle slipped of the gear and moved forward unmanned resulting in the accident, which proved fatal to the deceased. From the above, it is easily discernible that there is no violation on the part of anyone as the vehicle was not operated by any one. Thereby, Sections 165 and 166 of the Motor Vehicles Act are not applicable to this case.

7. Though compensation under the Motor Vehicles Act is not available to the claimants, but the dependents of the deceased are entitled to get compensation under Section 3(1) of the Workmen Compensation Act.



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This Court has power to convert the claim under the Motor Vehicles Act into one under the Workmen Compensation Act. Accordingly, the petition under the Motor Vehicles Act before the Tribunal is treated as one filed under the Workmens' Compensation Act.

8. The deceased was aged about 23 years at the time of accident and though the claimants claimed that the deceased was earning a sum of Rs.15,000/- per month, no proof was produced by them. Considering the age of the deceased and the nature of work, this Court is inclined to fix the monthly income of the deceased as Rs.8,000/- and applying the appropriate factor is 219.95 and the compensation is quantified at Rs.17,59,600/- and deducting 50% towards contributory negligence, the total compensation payable by the appellant/Insurance Company to the respondents 1 to 3/claimants is Rs.8,79,800/-. The respondents 1 to 3/claimants are entitled to get the above compensation along with interest at the rate of 12% from the date of accident till the date



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of deposit. During the time of filing the claim petition, the first claimant, who is the father of the deceased, was alive, but who has since passed away, which is brought on record.

9. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

In view of the order passed in C.M.A.No.417 of 2018, C.M.P.No.15103 of 2024 is dismissed and consequently, Cross Objection SR No.59721 of 2024 is dismissed at the SR stage itself. The appellant/insurance company is directed to deposit the amount quantified by this Court above at Rs.8,79,800/- along with interest at 12% p.a. from the date of claim petition till date of deposit, less the amount, if any, already deposited, to the credit of MCOP No.879 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Thiruvannamalai District, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount in equal apportionment to the respective claimants to their respective bank account through RTGS



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within a period of two weeks thereafter. There shall be no order as to costs in this appeal. Connected miscellaneous petition is closed.

09.01.2025

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
ssb

To

1. The Motor Accidents Claims Tribunal,
Special Sub Court, Tiruvannamalai.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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M.DHANDAPANI, J.

ssb

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and
C.M.P.No.15103 of 2024
in CROS.OBJ.SR.No.59721 of 2024**

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