



C.M.A.No.2120 of 2021

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2120 of 2021
and C.M.P.No.11673 of 2021

M/s.Tata AIG General Insurance
Company Limited,
'Samson' Towers' II Floor,
No.403, Pantheon Road,
Egmore, Chennai – 600 008.

...Appellant

Vs.

1.P.Vani
2.Minor.P.Agasthiya
3.Minor.P.Ashika
*(Represented by her Mother
and Guardian P.Vani)*
4.R.Natarasan

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, 1988, against the Final Award dated 25.01.2021, passed in



C.M.A.No.2120 of 2021

WEB COPY

M.C.O.P.No.351 of 2017 by the Motor Accidents Claims Tribunal,
(Special Sub Court) at Cuddalore.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : No appearance

J U D G M E N T

This appeal is filed by the appellant challenging the Final Award dated 25.01.2021, passed in M.C.O.P.No.351 of 2017 by the Motor Accidents Claims Tribunal, (Special Sub Court) at Cuddalore.

2.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3.The petitioners are the claimants, the first respondent is the owner of the vehicle and the second respondent is the Insurance Company before the Tribunal.



C.M.A.No.2120 of 2021

WEB COPY

4.The brief facts of the case are as follows:

According to the petitioners, on 04.09.2016 at about 2.45 p.m. while the deceased was riding the first respondent's motorcycle bearing Registration No.TN-91-A-8133, near Ponnanthittu Vellatru Bridge, a man suddenly crossed the road. The deceased tried to avoid the accident but due to the sudden cross of the man, he turned the vehicle. As a result, the motorcycle driven by the deceased was capsized and resulted in the accident. Due to the accident, the deceased sustained grievous injuries and died on the spot. A case was registered in Crime No.244/2016 by Killai Police. The petitioners filed a claim petition before the Tribunal in M.C.O.P.No.351 of 2017, the Tribunal awarded a sum of Rs.5,50,000/- as compensation. Aggrieved by the same, the present appeal has been filed.

5.Learned counsel appearing for the appellant submitted that as a general principle in tort no one can claim compensation for his own negligence, while so the petitioners filing this petition under Section 163A of MVI Act is to get an unlawful claim from the appellant Insurance Company. Hence, he prayed to allow the appeal.



C.M.A.No.2120 of 2021

WEB COPY

6. Though the notice has been served and the name of the respondents having been printed in the cause list, there is no representation either in person or through counsel. Considering the pendency of the appeal, this Court is inclined to dispose of the appeal based on the materials available on record.

7. Heard learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent and perused the materials available on record.

8. The accident and the manner in which the accident happened are not disputed. This appeal has been filed only with regard to negligence.

9. Before the Tribunal, the first petitioner was examined as PW1 & Mr. Veerappan, an eye witness to the accident was examined as PW2 and on the side of the petitioners, 5 documents were marked as Exs.P1 to P5. On the side of the respondents, Mr. Krishnakumar, Senior Manager, TATA



C.M.A.No.2120 of 2021

WEB COPY

AIG General Insurance was examined as RW2 and 4 documents were marked as Exs.R1 to R4.

10.Learned counsel appearing for the appellant has relied upon a judgment of the Hon'ble Apex Court in the case of ***Ramkhilladi vs. United India Insurance Company*** reported in ***(2020) 2 SCC 550*** and accordingly, he prayed for appropriate orders.

11.Admittedly, the deceased is a borrower, who borrowed the vehicle from the fourth respondent and drove the vehicle in a rash and negligent manner, dashed the centre median and fell down, thereby, he died on the spot. The said vehicle was insured with the appellant Insurance Company. The Tribunal fastened the liability on the appellant Insurance Company. However, the issue arising in this appeal is no longer *res integra* as per the decision reported in ***2020 (2) SCC 550***.

12.On perusal of the above decision would make it clear the Hon'ble Apex Court arrived a conclusion, the borrower of the vehicle is



C.M.A.No.2120 of 2021

WEB COPY

not entitled to claim compensation. Hence, the award passed by the Tribunal is liable to be set aside. Accordingly, the award passed by the Motor Accidents Claims Tribunal, (Special Sub Court), Cuddalore in M.C.O.P.No.351 of 2017 dated 25.01.2021 is set aside. The appellant Insurance Company is permitted to withdraw the deposited amount.

13.In the result, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

02.01.2025

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

pam



C.M.A.No.2120 of 2021

WEB COPY

To

- 1.The Motor Accidents Claims Tribunal,
(Special Sub Court), Cuddalore.
- 2.The Section Officer,
VR Section,
High Court of Madras, Chennai – 600 104.



WEB COPY



C.M.A.No.2120 of 2021

M.DHANDAPANI, J.

pam

C.M.A.No.2120 of 2021

02.01.2025