



CMA.No.3078 of 2021

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :07.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.3078 of 2021

V.Velu (Deceased)

1.V.Kalaiselvi

2.V.Krishnan (Minor)

(Minor represented by his mother and
Natural Guardian Mrs.V.Kalaiselvi

... Appellants

Vs.

1. C.Patience

2. Reliance General Insurance

Rals Tower 2nd Floor, Plot No.2054, 2nd Avenue,
Next To Senthil Nursing Home, Anna Nagar,
Chennai 40.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to set aside the Judgment and decree dated 19.03.2021 in MCOP No.4100 of 2013 on the file of the Motor Accidents Claims Tribunal/Special Sub Court I, Court of Small Causes, Chennai.

For Appellant : M/s.Ramya V.Rao

For Respondents: Mrs.C.Bhuvanasundari for R2

R1-Notice dispensed with



CMA.No.3078 of 2021

WEB COPY

JUDGMENT

The Civil Miscellaneous Appeal has been filed challenging the award passed by the Tribunal in MCOP.No.4100 of 2013 on the file of Motor Accidents Claims Tribunal/Special Sub Court I, Court of Small Causes, Chennai dismissing the claim petition filed by the Appellants.

2. It is the case of the appellants/ claimants that the husband of the 2nd claimant and the father of the 3rd claimant namely Velu died in a road accident that had occurred on 03-05-2013. According to them, the deceased was riding his motorcycle in OMR salai from Thiruporur to Pooncherry. When he came near Koothavakkam, the lorry belonged to the first respondent insured with the second respondent, which was already parked on the road, suddenly turned to the right side in a rash and negligent manner and dashed against the motorcycle. As a result of the accident, the husband of the 2nd claimant sustained grievous injuries and died after 18 months. Even during the lifetime of husband of the first claimant, he had filed present claim petition seeking compensation for the



CMA.No.3078 of 2021

WEB COPY

injury suffered by him. Pending claim petition, he died. Therefore, the claim petition was continued by the claimants 2 and 3 as the one for claiming compensation for death of the victim.

3. The first respondent remained ex-parte and the claim petition was resisted by the second respondent/ insurance company on the ground that the accident had occurred only due to the negligence on the part of the deceased.

4. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred due to the negligence on the part of the deceased and hence, held that being a tortfeasor, he was not entitled to claim any amount. The Tribunal also held that the claimants failed to establish that the husband of the 2nd claimant died due to the injuries suffered by him in the road accident. Accordingly, the claim petition was dismissed. Aggrieved by the same, the claimants have come before this Court.



CMA.No.3078 of 2021

WEB COPY

5. The learned counsel for the claimants submitted that in order to prove the negligence on the part of the driver of the lorry belonged to the first respondent insured with the second respondent, an eyewitness was examined by the claimants as PW2 and his evidence was not at all considered by the Tribunal. The learned counsel also submitted that the husband of the 2nd claimant suffered head injuries and he died after 18 months due to the injuries suffered in the road accident. Therefore, the Tribunal committed an error in coming to the conclusion that the death was not due to the accident.

6. The learned counsel for the second respondent/insurance company submitted that based on the FIR and other evidence available on record, the Tribunal rightly came to the conclusion that the accident had occurred due to the negligence on the part of the deceased and therefore, the order passed by the Tribunal need not be interfered with.

7. In order to prove that the accident had occurred due to the negligence on the part of the driver of the lorry, the claimants examined



CMA.No.3078 of 2021

WEB COPY

one eyewitness as PW2. He clearly deposed that the driver of the lorry suddenly turned his parked vehicle to the right side without any signal and therefore, the accident had occurred. However, he did not prefer any police complaint. He also admitted that he was not examined by the police. The FIR was marked as Exhibit P5. It is seen from the said document that FIR was registered based on the complaint preferred by the driver of the lorry. However, the respondents have not examined the driver of the lorry to prove that the accident had occurred due to the negligence on the part of the deceased.

8. A perusal of Exhibit P5, FIR would indicate that the driver of the lorry clearly admitted that he had parked the lorry on the left-hand side of the road portion and the two-wheeler came in a rash and negligent manner and dashed against the back side of the lorry. Even as per the admission made by the driver of the lorry in the FIR, he parked the lorry on the road portion. He should have parked the vehicle only on the mud portion of the road if he was not able to move the vehicle mechanically. Further, he was expected to park the vehicle with sufficient safeguards and signals. In



CMA.No.3078 of 2021

WEB COPY

these circumstances, based on the admission in the FIR, this court comes to the conclusion that there is a negligence on the part of the driver of the lorry also. It is also seen that the deceased who was driving his two-wheeler dashed against the lorry from the back side. Therefore, taking into consideration the entire evidence available on record, this Court holds that there is 40% negligence on the part of the deceased and 60% negligence on the part of the driver of the lorry. Accordingly, 40% contributory negligence is fixed on the part of the deceased.

9. A perusal of Exhibits P1 and P2, discharge summaries, would indicate that the deceased was in hospital from 03.05.2013 to 11.05.2013. He suffered compound depressed fracture on forehead and compound fracture on left humerus bone. He underwent surgery for elevation of depressed fracture and for internal fixation of compound fracture. He was discharged on 11.05.2013. Therefore, he was in hospital nearly for 9 days. Absolutely, there is no medical records available on record to show that after discharge, he had been in continuous treatment till his death. Therefore, this Court comes to the conclusion that the injury suffered by



CMA.No.3078 of 2021

WEB COPY the 1st claimant is not a proximate cause for the death. Therefore, the said finding rendered by the Tribunal is affirmed. Hence, the claim petition can be treated only in respect of the injury suffered by the 1st claimant and it cannot be treated as a claim by the dependents of the deceased person seeking compensation of death.

10. In case of injury, even if the injured person is no more, his legal representatives are entitled to continue the claim petition to recover the loss suffered by the estate due to the injury. In the case on hand, the claimants produced Exhibit P4, Medical Bills to prove that a sum of Rs.3,61,027/- was spent by the injured towards treatment of the injury. Hence, the claimants are entitled to the said amount. In addition to the above said amount, the claimants are entitled to Rs.10,000/- each towards extra nourishment and attendant charges. Having regard to the nature of the injury suffered by the claimant namely head injury and the compound fracture of left humerus bone, this court feels that the injured/1st claimant would have been kept out of his avocation for nearly 6 months. Therefore, the claimants are entitled to Rs.60,000/- under the head loss of income



WEB COPY during treatment period. Since the injured person died subsequently, the question of granting any compensation under the head disability does not arise. Therefore, in all, the claimants are entitled to Rs.4,41,027/-.

11. The split up details of the award amount is tabulated as follows:-

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
2.	Loss of income	Nil	60,000/-	Granted
3.	Attender charges	Nil	10,000/-	Granted
4.	Extra Nourishments	Nil	10,000/-	Granted
5.	Medical Expenses	Nil	3,61,027/-	Granted
	Total	Nil	4,41,027/-	Enhanced by Rs.4,41,027/-
	Less:40%contributory negligence	Nil	1,76,411	
		Nil	2,64,616/-	Granted



CMA.No.3078 of 2021

WEB COPY

12. In view of the discussions made earlier, the award passed by the Tribunal is set aside and the Civil Miscellaneous Appeal is partly allowed. The appellants are entitled to Rs.2,64,616/- along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of realization. The second respondent/Insurance company is directed to deposit the award amount along with interest and costs within a period of six weeks from the date of receipt of copy of this Judgment. The appellants/claimants are permitted to withdraw the same along with interests and costs by filing a formal application before the Tribunal subject to satisfying the Tribunal about the attainment of majority by minor 3rd claimant/2nd appellant. No costs.

07.04.2025

Index:Yes/No
Internet:Yes/No
nr



CMA.No.3078 of 2021

WEB COPY

To

1. The Motor Accidents Claims Tribunal/Special Sub Court I,
Court of Small Causes, Chennai.
2. The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



CMA.No.3078 of 2021

S.SOUNTHAR, J.

nr

CMA No.3078 of 2021

07.04.2025