



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-12-2025

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**THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN
AND
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

**CMA No. 2701 of 2021
and
CMP.No.15534 of 2021**

The Divisional Office
United India Insurance Company Ltd,
Durga Bhavani Square, Opposite
Railway Station, Denkanikottai Road,
Hosur Town And Taluk, Krishnagiri
District- 635 109.

Appellant(s)

Vs

1. Latha
W/o.Late M.Prabu, Door No.2/217,
Pananthoppu Village, Vellampatti
Tharaff, O.G.Halli Post Pennagaram
Taluk, Dharmapuri District. Permanent
Address Door No.9/71,
Chithandapuram Village, Anchetty Post,
Denkanikottai Taluk, Krishnagiri
District-635 102.

2.Minor Yeswanth
S/o.Late M.Prabu, (rep.By Their Next
Friend Mother/1st Petitioner Latha)
Door No.2/217, Pananthoppu Village,
Vellampatti Tharaff, O.G.Halli Post
Pennagaram Taluk, Dharmapuri
District. Permanent Address Door



No.9/71, Chithandapuram Village,
Anchetty Post, Denkanikottai Taluk,
Krishnagiri District-635 102.

3.Minor Sathiya Pradap

S/o.Late M.Prabu (rep.By Their Next
Friend Mother/1st Petitioner Latha)
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Krishnagiri District-635 102.

4.Madhammal

W/o.Late Mariyappan Door No.2/217,
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5.Sudha

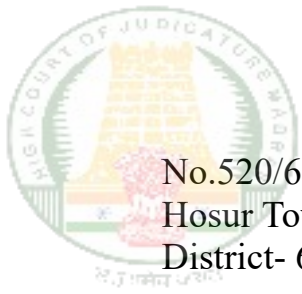
W/o.Late D.Sugumar, Residing At
Door No.520/6, Balaji Nagar,
Zuzuvadi, Hosur Town And Taluk,
Krishnagiri District- 635 126

6.Minor Shalini

D/o.Late D. Sugumar (minor Rep.By
Their Court Guardian
Adv.O.T.Sivakumar) Residing At Door
No.520/6, Balaji Nagar, Zuzuvadi,
Hosur Town And Taluk, Krishnagiri
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7.Minor Jagadesh

S/o.Late D.Sugumar, (minor Rep.By
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Adv.O.T.Sivakumar) Residing At Door



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8.Minor Keerthana
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Respondent(s)

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the decree and Judgment passed in M.C.O.P.No.762 of 2015 on 12.03.2020 on the file of the Learned Motor Accident Claims Tribunal (Special District Court, Dharmapuri) and be pleased to dismiss the above claim and allow the CMA.

For Appellant(s): Mr.J.Chandran

For Respondent(s): Mr.H.Abdul Muthalif
(For R1 to R4)

JUDGMENT

(Order of the Court was made by K.Kumaresh Babu J.)

The Civil Miscellaneous Appeal has been filed to set aside the decree and Judgment passed in M.C.O.P.No.762 of 2015 on 12.03.2020 on the file of the Learned Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

2. Heard Mr.J.Chandran, learned counsel appearing for the appellant and Mr.H.Abdul Muthalif, learned counsel appearing for the respondents 1 to 4.



3. The challenged award passed by the Motor Accident Claims Tribunal had been made only on the ground of fixing the negligence on the car that had been insured with the appellant.

4. The learned counsel for the appellant would submit that the car insured with the appellant, while overtaking a lorry, had dashed against the lorry and had hit a tree on the roadside, whereby not only the driver, but also the passenger died. He would submit that the criminal case that was registered came to be closed, in view of the fact that the lorry was not traceable and therefore the finding given by the Tribunal that the driver of the insured car had driven the vehicle in a rash and negligent manner is wholly without any material.

5. That apart, the learned counsel for the appellant would submit that the Hon'ble Apex Court as well as the Division Bench of this Court, in various cases, have held that when there is no negligence on the part of the vehicle which had been insured and when the second vehicle, which had been involved in the accident had not been traced, negligence ought to have been presumed only on such untraced vehicle and the negligence should not have been fastened upon the car that has been insured with the appellant. He would submit that the appellant should not be mulcted with the liability to pay the compensation.



6. The learned counsel for the appellant also relied upon the following judgments:

(i) ***Oriental Insurance Co., Ltd., Vs. Premlata Shukla and others***, reported in ***2007 ACJ 1928***.

(ii) ***Surender Kumar Arora Anr., Vs. Dr. Manoj Bisla & Ors.***, made in ***Civil Appeal No.2943 of 2012 Special Leave Petition (C) No.30683 of 2010 dated 20.03.2012***.

(iii) ***S. Ayswarya Vs. M. Balasubramanian***, reported in ***2025 (2) TN MAC 637(DB)***.

(iv) ***H. Kalaivani Vs. S. Sathish Kumar***, reported in ***2025(2) TN MAC 625 (DB)***.

7. Referring to the said judgments, the learned counsel for the appellant would submit that the Tribunal has wholly erred in mulcting liability upon the appellant for payment of compensation.

8. Countering the said arguments, the learned counsel appearing for the respondent would contend that none of the judgments that had been relied upon by the appellant would be applicable to the facts of the present case. He would submit that in all those cases, the driver of the insured vehicle had been found not to be rash and negligent in driving. He would submit that in the present



case, there is a categorical finding that the vehicle insured with the appellant had been driven in a rash and negligent manner, which had caused the accident.

Therefore, he prayed this Court for dismissal of the appeal.

9. We have considered the submissions made by the learned counsel appearing on either side and perused the materials available on record.

10. The claim of the appellant is that the other vehicle, which had been involved in the accident had not been traced and therefore, the criminal case launched pursuant to the said accident had also been closed. However, Ex.P1, the First Information Report, and Ex.R1, the final report filed pursuant to Ex.P1, were available before the Court. A perusal of Ex.P1 and Ex.R1 would also indicate that the driver of the insured car had driven the vehicle in a rash and negligent manner.

11. That apart, the Court below had also relied upon the evidence of P.W.2, and the findings rendered on the basis of the same are in consonance with Ex.P1 and Ex.R1.



12. As rightly pointed out by the learned counsel for the respondent, in the judgments relied upon by the learned counsel for the appellant, there has been a categorical finding of fact that the vehicle, which was insured with the insurance company therein had not been driven in a rash and negligent manner. When such findings had been given, the case of rash and negligent driving had failed to be proved against the vehicle that was insured and therefore, there could not be any liability on the Insurance Company before the Tribunal to make good the compensation.

13. On the other hand, in the present case, the Tribunal had given a categorical finding based on the evidence of PW2, who was an occupant in the car, that the vehicle had been driven in a rash and negligent manner.

14. We also, on the basis of Ex.P1 and Ex.R1, have come to the categorical conclusion that it is the driver of the vehicle insured with the appellant, had driven the vehicle in a rash and negligent manner.

15. For the aforesaid reasons, we do not find any infirmity in fixing the negligence on the part of the driver of the car insured with the appellant.



16. Accordingly, there is no error or infirmity in the well-considered judgment and decree impugned before us.

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17. Accordingly, the Judgment and Decree passed in M.C.O.P.No.762 of 2015 on 12.03.2020 on the file of the Learned Motor Accident Claims Tribunal, Special District Court, Dharmapuri, stands confirmed and the Civil Miscellaneous Appeal is dismissed.

18. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(C.V.K., J.) (K.B., J.)
02-12-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. The Learned Motor Accident Claims Tribunal,
Special District Court, Dharmapuri.

2. The Section Officer,
VR Section, High Court,
Madras.

3. LATHA
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