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C.M.A.No2286 of2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29.01.2025
Pronounced on	08.04.2025

C O R A M:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**C.M.A.No2286 of 2023**

and

C.M.P.No.21783 of 2023

M/s.The IFFCO-TOKIO General Insurance Co. Ltd.,
No.43/3, First Floor,
100 Feet Road, Mudaliarpeta,
Pondicherry-605 004.

... Appellant/4th Respondent

-VS-

1.R.Balaj Sharma

... 1st Respondent / Petitioner

2. M.N.Krishnamoorthy

... 2nd Respondent / 1st Respondent

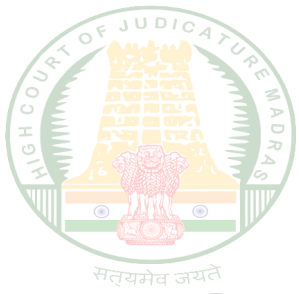
3. M/s.The National Insurance Co. Ltd.,

No.165, Nethaji Street,
Manjakuppam, Cuddalore.

... 3rd Respondent / 2nd Respondent

4. P.Venkatesh

... 4th Respondent / 3rd Respondent



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Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 praying to set aside the final Award dated 6th September, 2022 passed in M.C.O.P. No.1525 of 2016 by the Motor Accident Claims Tribunal (Special Subordinate Court) at Cuddalore.

For Appellant	: Mr.J.Michael Visuvasam
For R1	: Mrs.Ramya V.Rao
For R2 & R4	: No appearance
For R3	: Mrs.R.Sree Vidhya

J U D G M E N T

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated September 6, 2022 passed by the 'Motor Accidents Claims Tribunal / Special Subordinate Court, Cuddalore' ['Tribunal' for short] in M.C.O.P. No.1525 of 2016, the fourth respondent therein / Insurance Company has preferred this appeal.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Motor Accident Claims Original Petition.

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WEB CO **BRIEF FACTS PUT FORTH BY THE PETITIONER / INJURED**

3. On January 10, 2016 at about 02.30 a.m., while the petitioner / injured was travelling in the Car bearing Registration No.TN-22-CH-9267 driven by one Ravi [who also passed away in the accident] on Chennai-Trichy National Highways near Chepauk Komugi Bridge, a lorry bearing Registration No.TN-34-D-3677, driven by its driver in a rash and negligent manner dashed against the Car and consequently, the petitioner sustained grievous injuries and multiple fractures all over his body including head. According to the petitioner / injured, at the time of accident, he was a 24 years old Pandit earning a sum of Rs.50,000/- per month. Before the Tribunal, owner and insurer of the said car, as well as owner and insurer of the said lorry, were arrayed as Respondent Nos.1 to 4 respectively. Stating that the lorry was insured with the 4th respondent and the accident occurred due to the reckless driving of driver of the lorry, the petitioner filed the Claim Petition before the Tribunal seeking compensation of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) along with interest and costs from the respondents.

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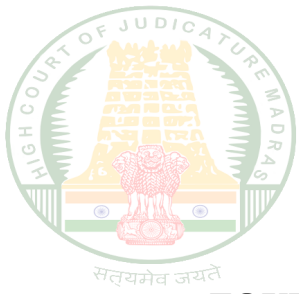
RESPONDENT NOS.1 & 3

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4. Respondent Nos.1 & 3 are the owners of the said car and the said lorry respectively. They did not appear and choose to contest the petition and hence, were set *ex-parte* before the Tribunal.

SECOND RESPONDENT'S CASE

5. It is the case of the second respondent that there was negligence on the part of the driver of the lorry bearing Registration No. TN-34-D-3677, as he drove the lorry in a rash and negligent manner, causing the accident. In the absence of proof of negligence on the part of the car driver, the 2nd respondent is not liable to pay any compensation to the petitioner. Furthermore, the petitioner must establish his age, income, and occupation. The validity of driving licence of driver of the car, its Registration Certificate, Permit *etc.*, was disputed. The First Information Report (FIR) was registered with a false narration of facts. Stating that the compensation claimed is unsustainable and excessive, the 2nd respondent prayed for the dismissal of the claim petition.



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FOURTH RESPONDENT'S CASE

6. It is the case of the fourth respondent that the allegation that the lorry driver was the root cause of the accident is false. As per FIR and charge sheet, the car driver was responsible for the accident. Since the car driver / deceased – Ravi died in the accident, the case was closed as abated. Therefore, the 2nd respondent – insurer of the car is liable to compensate the petitioner. Consequently, the claim against the 4th respondent / insurer of the lorry is not maintainable, and therefore, the 4th respondent has prayed for the dismissal of the claim petition against it.

TRIBUNAL

7. The enquiry was conducted jointly with that of M.C.O.P. No.1524 of 2016. On the side of the petitioner, petitioner himself was examined as P.W.1 and the 1st petitioner in M.C.O.P. No.1524 of 2016, namely Vignesh, who is an injured witness to the accident, was examined as P.W.2, and Ex-P.1 to Ex-P.21 were marked. On the side of the respondents, one Santhiyalakshmi, Legal Officer of the 4th respondent was examined as R.W.1 and copy of charge sheet was marked as Ex-R.1. Disability

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Certificate No.2052, issued by the District Medical Board, Government Head Quarters Hospital, Cuddalore, assessing the disability at 28% was marked as Ex-C.2.

8. The Tribunal, after considering the evidence available on record, held that the accident had occurred on account of fault on the part of driver of the lorry. Accordingly, the Tribunal held that the 4th respondent, being insurer of the lorry, is liable to pay the compensation to the petitioner.

9. With regard to quantum of compensation, though there was no document produced in proof of income of the injured, on the basis of the age of the injured and his alleged occupation, the income of the injured was nationally taken as Rs.10,000/- per month. The Tribunal, upon considering the injuries sustained by the petitioner in the accident, computed the compensation for disability on percentage method by taking Rs.5,000/- per disability percentage and further, awarded compensation under various other heads as stated below:-

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Sl. No.	Head	Amount
1.	Partial Permanent Disability (Rs.5,000x28%)	Rs.1,40,000/-
2.	Pain and sufferings and mental agony	Rs.1,00,000/-
3.	Bystander chargers	Rs.5,000/-
4.	Transport Charges	Rs.5,000/-
5.	Nutrition	Rs.25,000/-
6.	Medical Expenses	Rs.2,59,830/-
7.	Loss of Earning for 6 months (Rs.10,000/-x6)	Rs.60,000/-
8.	Loss of Amenities	Rs.10,000/-
	Total	Rs.6,04,830/-

10. Feeling aggrieved by the liability fastened on it and the quantum of compensation awarded by the Tribunal, the 4th respondent / insurer of the lorry has preferred this appeal.

ARGUMENTS:

11. Mr.J.Michael Visuvasam, learned counsel for the appellant herein / 4th respondent / insurer of the lorry would argue that FIR was registered against the driver of the car. The petitioner, having filed the claim petition based on the FIR, cannot turn around and say contrary to the FIR



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that the accident had occurred due to the rash and negligent driving of driver of the lorry. He would further argue that the manner of the accident itself establishes that the first respondent's car's driver alone was negligent and sole cause of the accident. The Tribunal failed to consider the said aspects and by merely relying on the evidence of an eyewitness / P.W.2, fastened the liability on the 4th respondent /insurer of the lorry, which is erroneous. Further, the compensation awarded by the Tribunal is on the higher side and not based on evidence. Accordingly, he prayed to allow the Civil Miscellaneous Appeal and set aside the Award of the Tribunal.

12. Per contra, Mrs.Ramya V. Rao, learned counsel appearing for first respondent herein / petitioner, would contend that the accident happened during wee hours on January 10, 2016, and P.W.2, who is an injured witness has clearly deposed that the accident occurred only due to the rash and negligent driving of the 3rd respondent's lorry's driver . She would further contend that in connected case in M.C.O.P.No.1522 of 2016, one Singaravelan, Special Sub Inspector of Police (S.S.I.), Vepur was examined as R.W.1 and it is clear from the evidence of R.W.1 / S.S.I. that

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the car proceeded from South to North in the correct lane and the lorry, which was proceeding from North to South, had taken diversion, travelled in the car's lane and dashed against the car. From the evidence of R.W.1, it is discernible that the accident had occurred only due to the rash and negligent driving of the 3rd respondent's lorry's driver. There is no infirmity or illegality in fixing the liability on the 4th respondent / insurer of the lorry and hence, no interference is warranted in this regard. Further, she would contend that the Tribunal has awarded a fair compensation and there is no need to interfere with it. If at all any interference is to be made, it has to be only to enhance the compensation. Accordingly, she would pray to dismiss the Civil Miscellaneous Appeal.

13. Mrs.R.Srividya, learned counsel for the 3rd respondent herein / 2nd respondent / insurer of the car, referring to the evidence of R.W.1 / S.S.I. in regard of the manner of accident, would contend that the accident occurred due to the rashness and negligence on the part of the driver of the lorry and hence, it is the insurer of the lorry / 4th respondent who is liable to pay compensation. There being no negligence on the side of

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the car, 2nd respondent being its insurer, is not liable to pay any compensation. Accordingly, she prayed to dismiss both the Civil Miscellaneous Appeals as against the 3rd respondent herein / 2nd respondent.

DISCUSSION

14. Heard the learned counsel on either side and perused the evidence and materials available on record.

15. The accident occurred in the wee hours of January 10, 2016. Driver of the car, namely Ravi and front co-passenger, namely S.Ramanarayanan passed away in the accident. The petitioner and two others were injured. The dependents of the driver of the car – Ravi filed M.C.O.P. No.1522 of 2016, in which one Singaravelan, Special Sub Inspector of Police (S.S.I.), Veppur was examined as R.W.1 and he had deposed that the injured's car was travelling in the left lane in accordance with the rules and norms, and it was the lorry which was diverted onto the left lane / car's lane due to road maintenance. Further, the petitioner in this

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case, namely Vignesh examined himself as P.W.2, and deposed that they were proceeding on the left lane as per rules towards Chennai and at that time, the 3rd respondent's lorry came in the opposite direction in their lane (left lane) in a rash and negligent manner and caused the accident.

16. From the above evidence of P.W.2 and the S.S.I., it is discernible that the car was proceeding in the correct lane. Though the lorry was diverted onto the left lane for road maintenance, the lorry driver, for he is travelling in the opposite lane, ought to have taken more care and caution. The burden is upon the 3rd respondent / owner of the lorry and the 4th respondent / the lorry's insurer to prove that the lorry's driver drove the lorry in a careful and cautious manner while proceeding in the left lane / car's lane. In these circumstances, the 4th respondent / insurer of the lorry ought to have examined the lorry driver, who is the competent person to depose in this regard, but it failed to do so.

17. Though the FIR has been lodged against the driver of the car, it has to be noted that it has been lodged by the lorry driver. He



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naturally would have preferred the complaint in terms favourable to him and hence, the FIR alone cannot be taken to fix negligence in this case. One may argue that if really the lorry driver was negligent, the petitioner's side would have preferred a complaint too, or at least denied the FIR by filing protest petition. On the face of it, the argument may seem plausible. But one has to look deeper through the lens of facts and circumstances of this case. The accident occurred in the wee hours. Two occupants passed away in the accident, and the remaining three occupants including the petitioner herein were injured in the accident and admitted in the hospital. There is no evidence available on record to show whether the factum of registration of FIR and the pursuant closure report was intimated to the petitioner's side or not. Considering the cumulative facts and circumstances, this Court is of the view that non filing of FIR or protest petition on the side of the petitioner is not sufficient to impute negligence on the car driver.

18. As per the evidence of P.W.2, the driver of the lorry was responsible for the accident. The evidence of R.W.1 in M.C.O.P. No.1522 of 2016 / S.S.I. that on account of diversion, it was the lorry driver, who

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barged into the lane in which the car was proceeding to Chennai in the righteous direction, dashed against the car and caused the accident, is plausible and strengthens the case of the petitioner. The Tribunal, after considering the facts and circumstances, by relying on the evidence of P.W.2 and R.W.1 in M.C.O.P. No.1522 of 2016, found the 3rd respondent's lorry's driver negligent. Ex-P.4 – Motor Vehicle Inspection Report [M.V.I. Report] and Ex-P.5 – Insurance Policy document of the lorry would show that the 3rd respondent's lorry was insured with the 4th respondent at the time of accident and accordingly, the Tribunal held the 4th respondent as the insurer of the lorry is liable to pay compensation to the petitioner. This Court finds no reason to deviate from the said findings of the Tribunal.

19. As regards the quantum of compensation, as per Ex-C.2, the petitioner suffered '*fracture in both bones left leg, fracture Distal Radium Left with facial injury, United Fracture BB left leg with implant in situ*' and thereby suffered 28% partial permanent disability. In view of the same, the Tribunal is justifiable in adopting percentage method by taking Rs.5,000/- per percentage of disability. Further, the Tribunal, left with no other option,

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as no documentary evidence was produced to prove the educational qualification or income of the petitioner, fixed Rs.10,000/- as notional income of the injured. In view of the severity of the injuries suffered, it is plausible that the petitioner would have taken time to recover and would not have been able to work for around 6 months and hence, the Tribunal is also justifiable in awarding loss of income for 6 months at the rate of Rs.10,000/- per month. Further, the Tribunal is right in awarding a sum of Rs.2,59,830/- towards medical expenses, as the same is substantiated by Ex-P.11 – Medical Bills.

20. In conclusion, in the considered opinion of this Court, the compensation to the tune of Rs.6,04,830/- arrived at by the Tribunal is just and reasonable, warranting no interference by this Court and hence, the appeal filed by the insurance company is liable to be dismissed. Therefore, the appellant / Insurance Company is directed to deposit the compensation amount of Rs.6,04,830/- awarded by the Tribunal along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of M.C.O.P.No.1525 of 2016 on the file of Motor

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Accident Claims Tribunal (Special Subordinate Court), Cuddalore, less the amount if any already deposited, within a period of eight weeks from the date of receipt of copy of this Judgment. On such deposit being made, the petitioner/injured is entitled to withdraw the same by filing proper application.

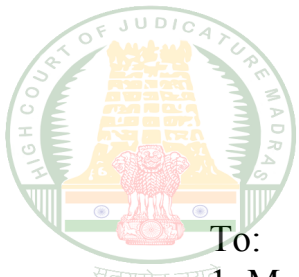
RESULT:

21. Accordingly, this Civil Miscellaneous Appeal filed by the Insurance Company stands dismissed. In view of the facts and circumstances of this case, the parties shall bear their own costs. Consequently, connected Civil Miscellaneous Petition is closed. There shall be no order as to costs.

(J.N.B.J.,) (R.S.V.J.,)

08.04.2025

Index: Yes / No
Internet: Yes / No
Speaking Order/ Non Speaking Order
ar/tk



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To:

1. Motor Accident Claims Tribunal /
Special Subordinate Judge,
Cuddalore.

2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

J.NISHA BANU,J.,
AND
R.SAKTHIVEL,J.,
ar/tk

PRE-DELIVERY APPELLANT IN
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