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C.M.A.No.2294 of 2023 and C.M.P. No.21853 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	04.06.2025
Pronounced on	30.06.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.2294 of 2023 and
C.M.P. No.21853 of 2023

M/s. United India Insurance Company Limited

No.52, General Muthiah Street,

Sowcarpet, Chennai 600 079

...Appellant

Vs.

P. Padmavathy (since deceased)

1. M. Pushparaj

2. S.P. Dhandapani

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, praying to set aside the decree and judgment passed in M.C.O.P. No.3419 of 2008 dated 13.12.2022 on the file of the Motor Accident Claim Tribunal (II Judge, Court of Small Causes), Chennai.

For Appellant : Mr.K. Swaminathan

For Respondents : No Appearance



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JUDGMENT

The present appeal has been filed against the decree and judgment passed in M.C.O.P. No.3419 of 2008 dated 13.12.2022 on the file of the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai.

2. Briefly stated, the facts giving rise to the present appeal are that one Padmavathy (since deceased) filed a Claim Petition under Section 166/142 of the Motor Vehicle Act and Rule 3 of M.A.C.T Rules, claiming compensation of Rs.3,00,000/- for the injuries sustained by her in a road accident that took place on 30.04.2007. During the pendency of the petition, the injured died and therefore the legal heir of the injured, namely, her husband has been impleaded as the 1st petitioner.

2.1. The facts of the case are that on 30.04.2007, at about 15.30 hours, the said Padmavathy was walking from west to east direction near Kannagi Statue bus stop and at that time, a motorcycle bearing Registration



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No.TN 05 F 7591 came from south-north direction with great speed in a rash and negligent manner hit against the said Padmavathy, in which she suffered grievous injuries. Claiming that the rider of the motorcycle was solely responsible for the accident and that since the said vehicle is insured with the appellant /2nd respondent, both of them are jointly and severally liable to pay compensation to her, the said Padmavathy filed the abovesaid claim petition.

2.2. The owner of the vehicle and the Insurance Company contested the claim petition. The owner of the vehicle contended that one Thangamani has driven the vehicle at the time of accident and that the injured crossed the road without noticing the signal and without using the subway and therefore the alleged accident took place only due to the negligent act of the injured. His further contention is that the compensation claimed by the injured is excessive.

2.3 The 2nd respondent/Insurance Company contended that the injured suffered from pre existing diseases, which was later on clubbed with the accident. Without producing the post-mortem report, the claimant has



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converted the injury case into fatal belatedly after ten years to get the benefit of the legislation. He further submitted that during the pendency of the proceedings, the claimant has not established that there is direct nexus between the death of the deceased after ten years of the alleged accident which took place on 10.04.2007 and in such circumstances the legal heir of the deceased could claim only under Section 140 of the Motor Vehicles Act.

2.4. On the above pleadings of the parties, the Tribunal framed the following points.

- i. *"Whether the accident took place due to rash and negligent act of the rider of the Motorcycle bearing Registration No.TN-05-F-7591?"*
- ii. *Whether the petitioner/claimant had sustained injuries due to the accident?*
- iii. *Whether the respondents are liable to pay the compensation to the petitioner/claimant?*
- iv. *Whether the petitioner/claimant is entitled for compensation? If so, from whom and what is the quantum?*
- v. *To what other relief the petitioner is entitled?"*



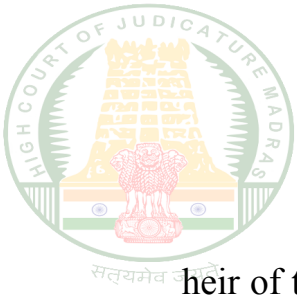
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2.5. The Tribunal, based on the oral and documentary evidence has come to the conclusion that the accident took place due to the negligent act of the rider of the motorcycle bearing Registration No. TN 05 F 7591 and held that the claimant is entitled for a compensation of Rs.8,33,000/- with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realisation to be paid by the second respondent excluding the period of default.

3. Aggrieved by this, the present appeal has been filed by the 2nd respondent/Insurance Company.

4. Mr.K. Swaminathan, the counsel for the appellant submits that the alleged accident took place on 30.04.2007. The FIR(Ex.P1) was registered on 30.04.2006 which was dated prior to the alleged accident. But, the Tribunal failed to appreciate this fact and has erroneously relied upon the FIR for the alleged accident. His further contention is that in spite of the fact that the claimant has not produced any document to show that he is the legal



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heir of the deceased, the Tribunal has erroneously held that the claimant is the legal heir of the deceased. It is further submitted that in the absence of any documentary evidence for the treatment undergone by the deceased, the Tribunal has allowed the petition clandestinely which requires interference by this Court.

5. In spite of notice, there is no representation on the side of the respondent.

6. It had been contended by the learned counsel for claimant/1st respondent before the Tribunal that to establish the negligence on the part of the rider of the motorcycle, the husband of the deceased/claimant, who was the eye witness for the alleged accident, was examined and no contra evidence was adduced on the side of the Insurance Company to rebut the evidence of the claimant. It is further submitted that the victim has sustained severe injuries in the said accident due to which her uterus and ovaries were damaged and that the victim was in continuous treatment for more than ten years and died on 15.06.2017.

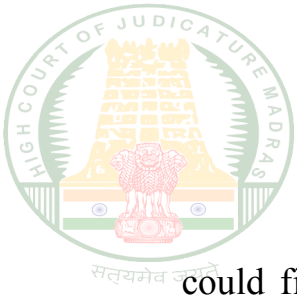


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7. The claim in the claim petition is that on 30.04.2007 at about 15.30 hours, the petitioner was walking on the beach road and while she was nearing the Kannagi statue, at that time a motorcycle bearing Registration No. TN 05 F 7591 came with high speed in a rash and negligent manner and hit against the petitioner and caused grievous injuries to her. Hence, the rider of the motorcycle is solely and directly responsible for the accident and hence the petitioner was constrained to file the claim petition claiming compensation of Rs.3,00,000/- for the injuries sustained by her in the said accident. During the pendency of the case, the injured died and thereafter the legal heir of the injured, namely, her husband has been impleaded as the first petitioner in the claim petition. Thereafter, the claim petition was amended from non fatal to fatal case.

8. It is not in dispute that the alleged accident took place on 30.04.2007, in which the victim Padmavathy suffered injuries. It is clear that the motor accident had occurred due to the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN 05 F 7591. There is no contra evidence on the side of the respondent to rebut the same. Hence, I



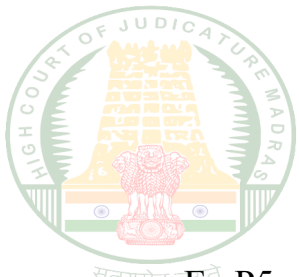
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could find no error or infirmity in the finding of the Tribunal in fixing the negligence on the part of the rider of the motorcycle.

9. There is nothing on record to show that the claimant is not the husband of the deceased Padmavathy. Hence, non production of legal heir certificate do not vitiate the claim of the claimant. Therefore, the claimant is entitled to claim compensation.

10. Admittedly the injured died during the pendency of the claim petition. The appellant Insurance Company resisted the claim of the claimant that he has not established the direct nexus between the death of the deceased and the accident which had taken place on 30.04.2007. He further submitted that in such circumstances, being the dependant of the deceased, the claimant is entitled to claim only the 'No Fault Claim' under Section 140 of the Motor Vehicles Act for a sum of Rs.50,000/- alone. It is the specific case of the claimant that the deceased Padmavathy sustained injuries due to the accident took place on 30.04.2007 and that the injuries sustained by her resulted in her death on 15.06.2017. The claimant examined as P.W.1 has produced Ex.P2 to



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Ex.P5 and Ex.P7 (Discharge Summary notes) to establish the fact that the deceased was in continuous treatment post accident till her death. P.W.1 had also clearly deposed that the deceased had died due to the accident that took place on 30.04.2007. Therefore, non production of postmortem certificate do not vitiate the claim made by the claimant. No contra evidence was produced on the side of the appellant/Insurance Company to show that the deceased had died due to some other reason other than the injuries suffered by her in the accident. Hence, the Tribunal has rightly concluded that the deceased had died only due to the accident that occurred on 30.04.2007, which warrants no interference by this Court. Accordingly, the Civil Miscellaneous Appeal stands dismissed. No. Costs. Consequently connected miscellaneous petition is closed.

30.06.2025

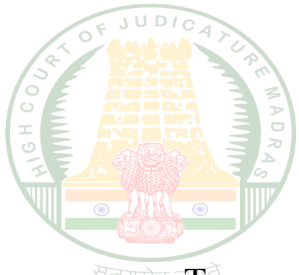
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Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

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1. Motor Accident Claim Tribunal (II Judge, Court of Small Causes),
Chennai.
2. The Section Officer,
VR Section,
High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI, J.

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Pre-delivery Judgment made in

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