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CMA Nos.3154 of 2021 & 1797 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 03 / 01 / 2025

JUDGMENT DELIVERED ON : 29 / 01 / 2025

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA Nos.3154 of 2021 & 1797 of 2022
and
CMP No.12964 of 2022 in CMP No.1797 of 2022

CMA Nos.3154 of 2021

1. G.Parameswari
2. Rajkumar
3. Indhrani

... Appellants / Petitioners

Vs.

1. G.Selvakumar
2. United India Insurance Co., Ltd.,
104-A, Ranga Building,
Peramanur Main Road,
Near Four Road, Salem,
Salem - 636 007.

... Respondents/Respondents

CMA Nos.1797 of 2022

United India Insurance Co., Ltd.,
104-A, Ranga Building,
Peramanur Main Road,
Near Four Road, Salem,
Salem - 636 007.

... Appellant / 2nd respondent

Vs.



CMA Nos.3154 of 2021 & 1797 OF 2022

1. G.Parameswari

2. Rajkumar

3. Indhrani

... Respondents 1 to 3 / Petitioners 1 to 3

4. G.Selvakumar

... Respondent No.4 / Respondent No.1

PRAYER IN CMA.No.3154 of 2021 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking enhancement of the Compensation awarded vide the Award dated 12.08.2021 made in M.C.O.P.No.1264 of 2019 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Salem.

PRAYER IN CMA.No.1797 of 2022 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the judgement and decree dated 12.08.2021 passed in M.C.O.P.No.1264 of 2019 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Salem.

For Appellants in CMA.No.3154 of 2021 & Respondents 1 to 3 in CMA.No.1797 of 2022	Mr.M.Mohamed Riyaz
For 2 nd respondent in CMA.No.3154 of 2021 & Appellant in CMA.No.1797 of 2022	Mrs.R.Sreevidhya
For first respondent in CMA.No.3154 of 2021	Notice dispensed with by this Court's Order dated June 23, 2023
For fourth respondent in CMA.No.1797 of 2022	No appearance despite service.



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COMMON JUDGMENT

WEB CO **R.SAKTHIVEL, J.**

Feeling aggrieved by the Award dated August 12, 2021 passed by the 'Motor Accidents Claims Tribunal, Special District Judge, Salem' ('Tribunal' for short) in M.C.O.P.No.1264 of 2019, the petitioners/claimants therein have preferred CMA.No. 3154 of 2021 seeking enhancement of compensation. The second respondent / insurance company therein has preferred CMA.No.1797 of 2022 challenging its liability and the quantum.

2. For the sake of convenience, the parties herein will be referred to as per their rank in the Motor Claim original Petition.

Petitioners' Case:

3. The case of the claimants is that on September 28, 2018, at around 5.00 p.m., the deceased - Vijayakumar, aged 34, was riding his motorcycle bearing Registration No.TN 54 E 8890 from Kodumudi to Salem near Paramathi Pillaikalathur X-road speed breaker. At that time, another motorcycle bearing Registration No.TN 30 P 7447, ridden by its rider rashly and negligently, hit the motorcycle in which the deceased was



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riding from behind. Due to the sudden impact, the deceased fell down, sustained injuries, and died on the way to the hospital. At the time of the accident, the deceased was working as a Cable Operator for Tamilnadu Arasu Cable T.V., earning Rs.50,000/- per month. His sister / first petitioner, brother / second petitioner, and mother / third petitioner claimed that the first respondent's vehicle, insured with the second respondent, was liable for the accident. Accordingly, they filed a claim petition seeking Rs.50,00,000/- as compensation.

First Respondent's Case:

4. Despite notice to the first respondent, he did not choose to contest the original petition, hence he was called absent and set *ex-parte* by the Tribunal.

Second Respondent's Case:

5. The second respondent filed a counter stating that the accident occurred solely due to the rash and negligent riding of the deceased, that too without wearing helmet. He himself fell down and sustained injuries. First Information Report (FIR) was registered only against the deceased and after investigation, the police closed the case as charge abated. The first respondent's vehicle was not involved in the



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accident. This original petition has been filed with a view to get unlawful gain from the second respondent. The petitioners are sister, brother and step mother of the deceased – Vijayakumar and they are not dependents of the deceased. Accordingly, they prayed to dismiss the original petition.

Tribunal:

6. At trial, the second petitioner was examined as P.W.1, and one Ashok Kumar, said to be an eye witness to the accident was examined as P.W.2 and Ex-P.1 to Ex-P.14 were marked. On the side of the respondents, no one was examined, but Ex-R.1 - Final Report was marked.

7. The Tribunal after considering the evidence available on record came to the conclusion that the accident happened only due to the rash and negligent riding of the first respondent, who did not contest the case and hence, the second respondent / insurance company is not entitled to take a different stand that the accident was not caused by him. At the time of the accident, the first respondent's vehicle was insured with the second respondent and hence, both the respondents are liable to pay the compensation to the petitioners. With regard to quantum of compensation the Tribunal took a sum of Rs.17,000/- as his salary and deducted 1/3rd



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amount towards his personal expenses and computed the compensation as stated below:-

<i>S.No.</i>	<i>Head</i>	<i>Amount</i>
1.	Loss of Income [(17,000x12x16)=32,64,000–1/3(10,88,000) = Rs.21,76,000/-	Rs.21,76,000/-
2.	Loss of love and affection (20,000 x3)	Rs,60,000/-
3.	Funeral expenses	Rs.25,000/-
Total		Rs.22,61,000/-

8. Feeling aggrieved by the quantum of compensation awarded, the petitioners / appellants have filed the appeal in CMA.No.3154 of 2021 praying for enhancement of compensation amount. Questioning the liability, the insurance company has filed the appeal in CMA.No.1797 of 2022.

Arguments:

9. Mrs. R.Sreevidhya, learned counsel appearing for the Insurance Company / appellant in CMA.No.1797 of 2022 submitted that the First Information Report (FIR) was registered against the deceased - Vijaya Kumar, based on the information given by the first respondent. The first respondent is none other than uncle of the deceased - Vijayakumar. The claim petition has been filed contrary to the FIR. The petitioners placed reliance on Ex-P.1 - FIR treating it as part of their claim petition. Hence the petitioners cannot partly accept and partly reject the contents of



FIR. She further submitted that P.W.2, a close relative of deceased as well as the first respondent, was set up as an eyewitness. In fact the accident happened only due to the rash and negligent riding and over speed of the deceased - Vijayakumar. He himself fell down and sustained injuries. Only with a view to claim compensation unlawfully, the first respondent was set up to file an FIR and P.W.2 was set up to depose falsely. The second respondent specifically stated that the first respondent's vehicle was not involved in the accident but the Tribunal without applying its mind, erroneously came to conclusion that the first respondent's vehicle was involved in the accident.

9.1. She would further submit that the first petitioner, namely G.Parameswari, being the deceased's sister aged about 45 years, is married and residing along with her husband. The second petitioner, namely Rajkumar, is his elder brother aged about 41 years and he is residing separately. The third petitioner, namely Indhrani, is the step-mother of the deceased. Hence, the petitioners cannot be said to be dependents upon the salary of the deceased. Accordingly she prayed to allow the Civil Miscellaneous Appeal in CMA No.1797 of 2022 and dismiss the original petition.



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10. In response to the above arguments, Mr. M. Mohamed

Riyaz, learned counsel for the petitioners / appellants in CMA No.3154 of 2021 would argue that the first respondent rode his motorcycle in a rash and negligent manner and hit behind the motorcycle ridden by the deceased. The petitioners examined P.W.2 - Ashok Kumar to prove that the first respondent alone was negligent and caused the accident. Only with a view to escape from the liability, the first respondent himself preferred a false complaint, based on which Ex-P.1 - FIR was registered. The deceased did not fall down on his own, as alleged in the FIR. The insurance company did not take steps to examine the first respondent. In these circumstances, the evidence of P.W.2 can be accepted as the best piece of evidence and it cannot be simply brushed aside. In view of the deposition of P.W.2, Ex.P1 - FIR cannot be considered as an evidence to attribute negligence on the deceased. The Tribunal rightly appreciated the facts and evidence and arrived at a conclusion that the first respondent was the sole reason for the accident. There is no reason to interfere with the said decision and accordingly, he prayed to dismiss the appeal filed by the insurance company in CMA No.1797 of 2022.



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10.1. As regards the quantum of compensation, at the time of accident the deceased - Vijayakumar was 34 years old and working as a Cable Operator in Tamilnadu Arasu Cable T.V, earning a sum of Rs.50,000/- per month. But the Tribunal has taken only a meagre sum of Rs.17,000/- as his monthly income. Accordingly the learned counsel prayed to enhance the award amount and allow the appeal in CMA No.3154 of 2021.

Discussion:

11. This Court considered both sides arguments and perused the evidence available on record. The point that arise for consideration is whether the petitioners have proved the manner of accident as alleged by them in the claim petition.

12. Admittedly, Ex-P.1 - FIR was registered against the deceased -Vijayakumar that the accident is a self-fall. The first respondent is none other than the uncle of the deceased - Vijayakumar. On the basis of the complaint given by the first respondent, Ex-P.1 - FIR was registered. After registering the FIR, the police investigated the matter and filed Ex-R.1 – Final Report as charge abated in RC's 17 of 2018 after due notice to



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the complainant. The first respondent and P.W.2 - Ashok Kumar all are close relatives to the deceased. Considering the close relationship between the petitioners, P.W.2 and the first respondent, this Court is of the view that the petitioners were aware of the fact that the police after investigation closed the criminal case as charged abated. The petitioners side neither challenged the FIR - Ex-P.1 nor the Final Report - Ex-R.1 filed against the deceased. In such circumstances, the petitioners cannot claim that the FIR shall not be treated as part of their claim petition. Further, the first respondent was not examined by the insurance company.

13. In view of the facts and circumstances, the conduct of the first respondent and the close relationship between the petitioners, first respondent and P.W.2, this Court is of the considered view that Ex-P.1 - FIR and Ex-R.1 - Final Report disentitles the petitioners to claim compensation. This Court also come to the conclusion that the accident did not occur as pleaded by the petitioners. The first respondent vehicle was not involved in the accident. The accident occurred as a self-fall. Hence, the petitioners are not entitled to claim any compensation against the insurance company / second respondent. The insurance company is not liable to pay any compensation. The Tribunal is not right in concluding



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that the first respondent was not examined by the insurance company and hence, the first respondent was negligent and both the respondents were liable to pay compensation jointly and severally. Hence, the Award is to be interfered with by this Court. Accordingly, the Award passed by the Tribunal is set aside.

Result:

14. In the result, the appellant / insurance company's appeal in CMA.No.1797 of 2022 is allowed. The Award dated August 12, 2021 passed by the Motor Accidents Claims Tribunal, Special District Judge, Salem in M.C.O.P.No.1264 of 2019 is set aside. The appellants / claimants appeal in CMA.No.3154 of 2021 is dismissed. In view of the facts and circumstances of this case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

[J.N.B., J.]

[R.S.V., J.]

29 / 01 / 2025

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
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J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

av / tk

To

The Motor Accidents Claims Tribunal
Special District Judge
Salem.

PRE-DELIVERY COMMON JUDGMENT MADE
IN
CMA NOs.3154 of 2021 & 1797 OF 2022

29 / 01 / 2025