



CMA NO.2891 OF 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 13 / 11 / 2024

JUDGMENT DELIVERED ON: 28 / 01 / 2025

CORAM:

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

**CMA NO.2891 OF 2021
AND
CMP NO.16602 OF 2021**

M/s.United India Insurance Co. Ltd.,
Divisional Office
At 1171, Muthiah Complex,
Mettur Road, Erode – 638 011.
Erode District.

... Appellant /
3rd Respondent

Vs.

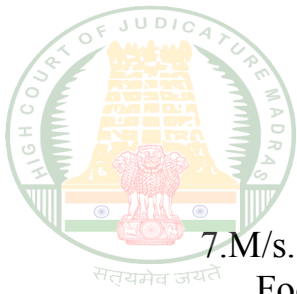
1.S.Pushpa @ Pushpakumari
2.Minor S.Suriasasi
3.Minor S.Sona
4.Minor S.Sachin
Minors 2 to 4 are represented by their
Next Friend and Mother S.Pushpa @
Pushpakumari

5.P.Subramaniam

... Respondents 1-5 /
Petitioners 1-5

6.C.Loganathan

... 6th Respondent /
1st Respondent



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7.M/s.SKM Animal Feeds &
Foods (India) Ltd.,
At 613/2A3, Savadipalayampudur Road,
Nanjaiuthukuli Post, Erode Taluk,
Erode District.

... 7th Respondent /
2nd Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated September 30, 2019 made in M.C.O.P.No.124 of 2015 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Tiruppur at Dharapuram.

For Appellant : Mr.S.Arunkumar

For Respondents 1-5 : Mr.MA.P.Thangavel

For Respondents 6&7 : No Appearance

J U D G M E N T

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated September 30, 2019 passed in M.C.O.P.No.124 of 2015 on the file of the 'Motor Accidents Claims Tribunal, III Additional District Court, Tiruppur at Dharapuram' ['Tribunal' for short] the third respondent / Insurance Company preferred this Civil Miscellaneous Appeal.

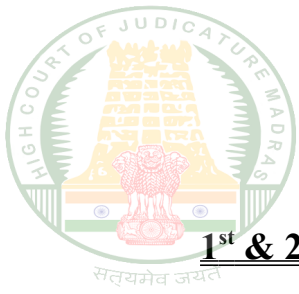
2.For the sake of convenience, the parties herein will be referred to as per their rank in the Motor Claim Original Petition.



Petitioners' case

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3.The 1st petitioner is the wife, petitioners 2 to 4 are the children and 5th petitioner is the father of the deceased – Sudhasankar. The case of the petitioners is that on September 23, 2014 at about 01.00pm, while the deceased was travelling in a Car bearing Registration No.TN-37-CB-8572 towards North near Chinnamuthur on Erode to Vellakovil main road, the 1st respondent who was driving the Lorry bearing Registration No.TN-34-B-4204 in a rash and negligent manner, without keeping the road rules and drove the vehicle on high speed from opposite direction dashed against the Car in which the deceased travelled and caused the accident. In the accident the deceased sustained multiple injuries all over his body and he succumbed to the injuries on October 10, 2014. The deceased was the head of the family and the entire family depend on his income. The 1st respondent was under the employment of the 2nd respondent who is the Owner of the lorry which involved in the accident. The 3rd respondent is the insurer of the Lorry of the 2nd respondent. Therefore, claiming compensation of Rs.70,00,000/- (Rupees Seventy Lakhs Only) from the respondents. Accordingly, the petitioners filed the claim petition before the Tribunal.



1st & 2nd Respondents' case

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4.The 1st and 2nd respondents have not contested the case and remained *Ex-parte*.

3rd Respondent's case

5.The 3rd respondent – Insurance Company filed counter stating that the Policy number 1706003114P102871861 covered the interest of the 2nd respondent Lorry bearing Registration No.TN-34-B-4204 at the material point of time for the period from July 24, 2014 to July 23, 2015. It was stated that the 1st respondent did not hold a valid driving license at the time of accident, thereby, he violated the terms and conditions of the policy. Additionally, the Lorry did not have a valid fitness certificate and permit which constitutes a violation of law. Therefore, the 3rd respondent has no liability to pay compensation to the petitioners. Insurance company further states that, the accident was caused due to the negligent act of the deceased, who himself invited the accident. The petitioners are not entitled to claim interest on Non-Pecuniary damages. The age, occupation and income of the deceased to be proved by the petitioners through relevant material evidence. The legal heirship of the deceased should be proved by the petitioners through documentary



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evidence. As such, the compensation claimed by the petitioners is highly

speculative, exaggerated, excessive and are without any legal or factual

basis. The petitioners are neither competent to file this petition nor the

petition is maintainable, because, the accident happened only due to the

rash and negligent act of the deceased. The Police registered a case against

the deceased and not against the driver of the Lorry. The charge against

deceased was closed by the Police as “Charge abated” due to the death of

the deceased. It is basic principle of tort that no one can claim for his own

negligence. Therefore, the 3rd respondent holds no liability to pay

compensation to the petitioners. The final report filed by the Police reveals

that the accident was happened due to the negligence of the deceased. The

deceased overtook a Car traveling ahead of him on the wrong side without

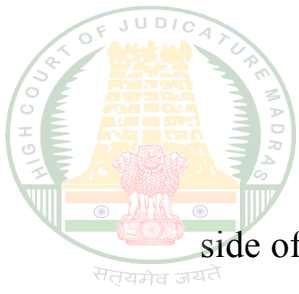
noticing the Lorry coming from the opposite direction, leading to the

collision with the Lorry and causing the accident. Therefore the 3rd

respondent is not having any liability to pay compensation to the

petitioners. Accordingly, it prayed to dismiss the claim petition.

6. At trial, the 1st petitioner was examined as P.W.1 and the eye witness who said to have been seen the accident is examined as P.W.2 and Ex-P.1 to Ex-P.20 were marked on the side of the petitioners. On the



side of the respondents, two witnesses were examined as R.W.1 and R.W.2

and no documents were marked.

7. The Tribunal after considering the evidence available on record, found that the accident occurred due to the rash and negligent driving of the 1st respondent. 2nd respondent is the owner of the Lorry. At the time of accident, the Lorry which caused accident was insured with the third respondent / Insurance Company. Accordingly, the Tribunal held that the third respondent / Insurance Company is liable to pay the compensation to the petitioners. Based on the income tax return the Tribunal has taken a sum of Rs.18,344/- as loss of monthly income to the dependency, added 25% future prospectus and applied multiplier of 14 and computed the compensation as stated below as extracted:-

Sl.No.	Head	Amount
1.	Loss of dependency	Rs.28,89,180/-
2.	Funeral expenses	Rs.20,000/-
3.	Transport expenses	Rs.10,000/-
4.	Loss of love and affection for the petitioners	Rs.20,000/-
5.	Consortium to the first petitioner	Rs.50,000/-
6.	Medical Expenses (as per Ex.P11)	Rs.4,83,423/-
	Total	Rs.34,72,603/-

8.Challenging the quantum of compensation, the third



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respondent / Insurance Company preferred this Civil Miscellaneous Appeal.

9.Learned counsel for the appellant / Insurance Company has submitted that the Tribunal erred in fastening responsibility on the 1st respondent despite the fact that the accident had occurred due to the negligence of the deceased. The first respondent lorry driver was proceeding from South to North, while the deceased was traveling in opposite direction North to South. The accident happened in the left extreme side of the road. As evidenced by Ex.P3 rough sketch, which clearly establishes that the accident occurred to the rash and negligent driving of the deceased. The Tribunal failed to consider Ex.P3. Further, the evidence of P.W.2 – alleged eye witness in the accident spot is not proved through admissible evidence. The first respondent driver was not examined. The Tribunal failed to note that the accident had occurred on the main road and the injured was admitted in the hospital, the hospital would have given an intimation, so the sketch cannot be rejected merely because it was drawn on the next day of the accident that too after written complaint is lodged. The Tribunal failed to note that closure of criminal case is based on specific reasoning and P.W.2 has not denied the sketch

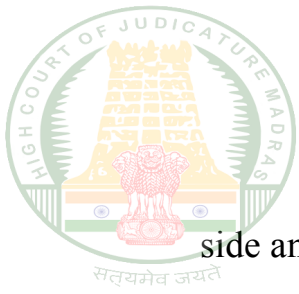


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and therefore, the deceased is a tort-feasor. Moreover, the final report is also against the deceased and charges were abated due to his death. The petitioners did not challenged the said criminal case. Further, the quantum awarded by the Tribunal is also excessive.

10.Per contra, the learned counsel appearing for the respondents 1 to 5 / petitioners 1 to 5 submits that the first respondent driver was not examined. The accident happend on September 23, 2014 at about 1.00pm, the Ex.P3 rough sketch preferred on the next day i.e., Septemeber 24, 2014, hence the Ex.P3 is not reliable document to prove the manner of accident. In the absence of contra evidence on record, the Tribunal after taking the facts and circumstances arrived at conclusion that the accident happend due to rash and negligent driving of the first respondent driver. Further the Tribunal after considering all available evidence inclinding the income tax returns, rightly awarded the compensation hence, there is no need to interfere the same. Accordingly, the learned counsel prayed to dismiss this Civil Miscellaneous Appeal.

11.This Court has considered the submissions made on either



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side and perused the materials available on record.

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12. On perusal of the records, it is seen that the 1st respondent, who drove the Lorry of the 2nd respondent, who allegedly caused the accident, has not been examined. The Investigation Officer was also not examined and the rough sketch drawn on the next day of the accident was also not marked through the attesting witness. The FIR was registered against the deceased Sudhasankar, since the Sudhasankar passed away the police closed the FIR as abated. The petitioner side examined one Rajendran as PW2 who is an ocular witness, deposed that the deceased driving the car from the North to South and east side of road with moderate speed. At the time the first respondent drove the lorry bearing registration No. TN-34-B-4204 from South to North direction with rash and negligent manner. The deceased had kept his car on the East side on the road, but the lorry driver turned to the right side and collided with the car dragging it to the west side of the road. PW2 and others immediately rescued the driver of the car and sent to him hospital.

13. The third respondent insurance company failed to



examined the first respondent driver. The first respondent driver was a competent person to provide details about in the manner of the accident.

Non examination of the first respondent driver was not explained. Ex.P3-rough sketch filed by the police, is not reliable since it was inspected the scene of occurrence only on the next day of the accident. More over, the inspection officer was not examined to disprove the evidence of PW2. The Tribunal based on original plea and evidence of PW2 came to the conclusion that the accident had occurred due to rash and negligent driving of the first respondent. There is no need to interfere with the Tribunal finding.

14.As regards the quantum of compensation is concerned, the Tribunal based on the income tax return, at the time of death of the deceased assessed the income. As per the income tax return for the assessment year 2012 – 2013 (Ex.P20), the tribunal has taken a sum of Rs.18,344/- as monthly income, 25% future prospects has also added, the Tribunal has rightly applied multiplier 14 and arrived compensation at the rate of Rs.34,72,603/-. The Tribunal has not awarded proper compensation under the head 'consortium'. However, the petitioners have not preferred any appeal against the Award.

15.In such circumstances, the appellant may not have any



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grievances over the Award passed by the Tribunal. There is no merit in this

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Civil Miscellaneous Appeal and accordingly, the same stands dismissed.

No costs. Consequently, connected Civil Miscellaneous Petition is closed.

[J.N.B., J.]

[R.S.V., J.]

28 / 01 / 2025

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
av/tk

To

The Motor Accidents Claims Tribunal,
III Additional District Court,
Tirupur at Dharapuram.



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CMA NO.2891 OF 2021

J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

av/tk

PRE-DELIVERY JUDGMENT MADE IN
CMA NO.2891 OF 2021

28 / 01 / 2025