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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.2603 of 2021
and CMP.No.14927 of 2021

Head office,
M/s.Royal Sundaram All. General Insurance Co. Ltd.,
45, 45, Whites Road,
Chennai-14.

... Appellants

Vs.

1.E.Azgarali

2. Rangam

3. Gyan Chand chandel
No.AG/14, Sanjay Gandhi TPT Nagar,
Delhi – 110 042.

4. Reliance Gen Insurance Co. Ltd.,
570, Naigaum Cross Road, Wadala West,
Mumbai – 400 031.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 12.02.2018 passed by the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri in MCOP. No.3174 of 2013



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For Appellant : Mr.K.Vinod

For Respondent : No appearance R1

RR2 to 4 – NDW vide order dated 27.04.2025

JUDGMENT

The appellant, aggrieved by the award dated 12.02.2018 passed by the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri in MCOP. No.3174 of 2013, has filed this appeal.

2. The case of the claimant is that on 03.03.2010 at about 09.00 PM. The first respondent was driving the goods vehicle bearing Reg. No.KA 01 AC 2329 belonging to the second respondent and insured with the appellant herein, from Ahemed Nagar to Hubli in the Ahmed Nagar _ Solapur Road, at that time, the lorry belonging to the third respondent and insured with the 4th respondent was driven by the driver in a rash and negligent manner and dashed against the first respondent vehicle. Due to which, he sustained injuries. It is under these circumstances, the first respondent filed a claim petition before the Tribunal seeking for compensation.



3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the first respondent/claimant is a Tort-feaser and the accident had taken place only due to the rash and negligent driving of the claimant. Having rendered such a finding, the Tribunal proceeded to determine the total compensation payable at Rs.2,86,000/- in the following manner:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Disability	1,76,000
2.	Medical Expenses	22,000
3.	Transportation, Attender charges & Extra Nutrition	25,000
4.	Pain and sufferings	30,000
5.	Loss of Amenities	30,000
6.	Damages to clothes	3,000
	Total	2,86,000/-

The Tribunal directed the above compensation to be paid by the appellant herein with interest at the rate of 7.5% p.a.



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4. The appellant aggrieved by its Liability awarded by the Tribunal, has filed the present appeal.

5. The learned counsel for the appellant submitted that without discussing anything with regard to the negligence aspect, the Tribunal has allowed the petition in favour of the first respondent without any basis. The Tribunal ought to have allowed the principles laid down in 2006 ACJ 1323 wherein a Full Bench of the Hon'ble Supreme Court has held that claim of Tort-Feaser is not maintainable under MV Act and that remedy if anything was available under Employees Compensation Act. The first respondent was suffering disability at 15% and the appellant is ready to pay the compensation by applying the Employees Compensation Act. In the present case, without applying the factor as per the Employees Compensation Act, the Tribunal awarded under Motor Vehicle Act, which is not sustainable.

6. The learned counsel further submitted that a criminal case has



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also registered as against the first respondent by the concerned jurisdictional police in Cr. No.136 of 2010. If the first respondent wants to fasten entire liability as against the respondents 3 & 4, he has to file appropriate additional evidence. Therefore, this Court may direct the first respondent to approach the authority under Employees Compensation Act for his remedy if any. Hence, this Court may interfere with the award passed by the Tribunal.

7. Heard the learned counsel for appellant State and perused the materials available on record. Though notice has been served on the respondents and name of the respondents have been printed in the cause list, no one appeared on their behalf. Hence, this Court is inclined to dispose the appeal based on the available records.

8. On a perusal of the impugned order, it is seen that the claimant himself has admitted that he was the employee as driver with the second respondent who is the owner of the lorry and the said lorry was insured with the appellant insurance company. The lorry, which was driven by its driver and owned by the 3rd respondent and insured with the 4th



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respondent, came from the opposite direction and dashed against the lorry which was driven the first respondent. Thereby, the accident had happened. It is equally an undisputed fact that a criminal case has been registered as against the first respondent after conducting thorough enquiry. Therefore, negligence fastened as against the first respondent is confirmed and liability fixed on the appellant is also confirmed. However, if the first respondent wants to maintain the claim petition as against the owner of the lorry and its insurer, he ought to have approached the court under Employees Compensation Act and he is not entitled to claim under the Motor Vehicle Act. To that extent, the award passed by the Tribunal is liable to be interfered with and this Court have power to convert the claim petition to Workmen Compensation Act as per *catena* of decisions of the Hon'ble Supreme Court as well as this Court.

9. Assessing the compensation under the Employee's Compensation Act in respect of the accident that took place in the year 2010, fixing the age of the deceased as 42 years, the relevant factor to be adopted is 186.50 and the monthly wages of the appellant/claimant to be fixed is Rs.8,000/-. Therefore, fixing Rs.8,000/- as the monthly wages,



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as fixed by the appropriate, the compensation under the head loss of income is arrived at : $15/100 \times 60/100 \times 8000 \times 186.50 = \text{Rs.1,34,561/-}$.

Except medical expenses and loss of income, the other heads awarded by the Tribunal is unwarranted.

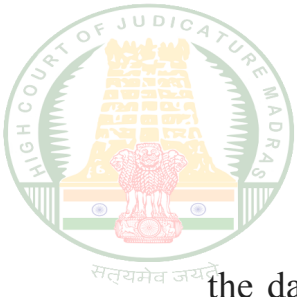
Loss of income = Rs.1,34,561/-

Medical expenses = Rs. 22,000/-

Total = Rs. 1,56,561/-

10. Accordingly, the compensation awarded by the Tribunal under the Motor Vehicles Act is set aside and instead compensation in a sum of Rs.1,56,561/- is awarded to the appellant/claimant under the Employee's Compensation Act.

11. Accordingly, the appeal stands allowed in part and the impugned award is modified by awarding a compensation of **Rs.1,56,561/-**. The appellant/Insurance company is directed to deposit the said amount to the credit of MCOP.No.3174 of 2013 along with interest at the rate of 12% per annum from the date of claim petition till



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the date of deposit, less, the amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment.

On such deposit being made, the Tribunal is directed to transfer the same directly to the bank account of the first through RTGS within a period of two weeks thereafter, upon production of proof with regard to payment of Court fee on the compensation awarded by this Court. No costs. Consequently, connected miscellaneous petition is closed.

21.01.2025

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To

The Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri



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M.DHANDAPANI.,J

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