

C.M.A.(MD)No.525 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.525 of 2023

and

C.M.P.(MD)No.6699 of 2023

The Branch Manager,
TATA AIG General Insurance
Company Limited,
B.No.16, Premier Aveion,
First Floor, New Railway Station Road,
Kumbakonam,
Thanjavur District-621 001. ... Appellant / 2nd Respondent

Vs.

1.Kalaiarasi

2.Durgadevi

3.Dhanapriya

4.Jeyasurya

5.Murugayi ... Respondents 1 to 5 / Petitioners

6.Sunitha ... 6th Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed in M.C.O.P.No.440 of 2021 dated 21.12.2022 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Pudukkottai.



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For Appellant : Mr.J.S.Murali

For R-1 to R-5 : Mr.R.Alagia Nambi

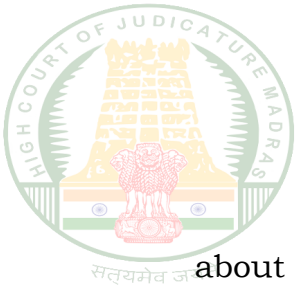
For R-6 : No appearance

JUDGMENT

Challenging the order passed by the Motor Accidents Claims Tribunal, Principal District Court, Pudukkottai, in M.C.O.P.No.440 of 2021 dated 21.12.2022, the Insurance Company has filed this Civil Miscellaneous Appeal.

2.For the sake of convenience, the parties herein are referred to as per their ranking before the learned Tribunal.

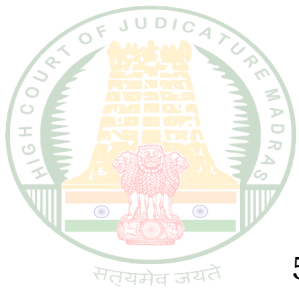
3.The petitioners / claimants are the legal heirs of the deceased. The first respondent is the owner of the four wheeler involved and the second respondent is the Insurance Company. On 16.08.2021, the deceased one Thiru.Vellakkannu was riding his TVS XL Super Two - Wheeler bearing registration No. TN-55-BT-3135 with one pillion rider Selvi, W/o.Chellaiah, towards Iluppur to Annavasal main road, east side of Kaladipatti near one Chellaiah's house. While he was proceeding towards Vadhiripatti from west to east on the left corner of the road at



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about 3:50 p.m, the 1st respondent's Ashok Leyland Dost four wheeler bearing registration No.TN 55 BT 7472 driven by its driver in front of the deceased's two wheeler had hit the deceased. As a result of which, the deceased was thrown away from his two wheeler and he sustained grievous injuries in his head and was taken to Annavasal Government Hospital in a 108 ambulance, from where he was further referred to Pudukottai Government Medical College Hospital for higher treatment. However, the said Vellakannu died on 17.08.2021. A First Information Report was registered as against the driver of the four wheeler in Crime No. 67 of 2021 by the Annavasal police. Seeking to compensate the death of the said Vellakkannu, his legal heirs have filed the M.C.O.P.

4.The learned Trial Court proceeded to examine two witnesses on the side of the petitioners and marked Exhibit P1 to P8 and one witness on the side of the respondents and marked Exhibit R1 to R6. On the basis of the arguments, evidence deposed and documents marked, the learned Trial Court passed an award of Rs.21,73,880/-. Challenging the same, the Insurance Company is before this Court.



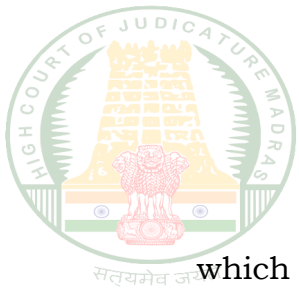
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5.The learned counsel for the appellant Insurance Company Mr.J.S.Murali submitted that, the appeal has been laid on the grounds of liability and quantum. Though a First Information Report was registered as against the driver of the four wheeler at the first instance, however, after proper investigation when the final report was filed by the Annavasal Police before the jurisdictional Magistrate, it was mentioned as “action dropped” as against the driver of the four wheeler and the mistake was fastened on the deceased person. Categorically contending that the tortfeasor cannot seek compensation for his own mistake, as per the dictum of the **Hon'ble Apex Court in Ningamma case**, he pressed for allowing the appeal.

6.Per contra, the learned counsel for the claimants submitted that the arguments substantiated by the learned counsel for the appellant is unfounded and a charge sheet cannot be laid as against a dead person and the final report has been marked as Exhibit R1.

7.A careful perusal of the same would reveal that the report of the investigating officer is that, the deceased had himself dashed against the four wheeler which was just parked on the left side, as a result of



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which he had sustained head injuries and passed away. However, the same has not been duly proved by the appellant by any evidence most particularly the eyewitness to substantiate the same. However, the pillion rider, namely, Selvi was examined as PW-2 and she had deposed her evidence categorically stating that the accident had occurred due to the negligence on the part of the 1st respondent's driver.

8.However, a careful perusal of Ex.R-2, a Motor Vehicle Inspection Report in respect of the vehicle bearing registration No. TN-55-BT-3135 which is marked as Ex R-3 would reveal that there was no damage in the said four wheeler. If the deceased had dashed against the said four wheeler, obviously there would have been some kind of damage to the four wheeler, in the absence of the same, the argument of the learned counsel for the appellant cannot be sustained. Accordingly, the appeal fails and the same is dismissed. Considering the fact that the claimants are the daughters of the deceased, I am of the considered view that the compensation awarded by the learned Tribunal is fair and reasonable.

9.The appellant Insurance Company is directed to deposit the compensation amount as awarded by the learned Tribunal with accrued



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interest and costs to the credit of M.C.O.P.No.440 of 2021, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Pudukkottai, within a period of four weeks (4) from the date of receipt of copy of this judgment, less the amount, if any already deposited. On such deposit, the claimants / respondents are entitled to get their shares as per the apportionment fixed by the Tribunal, less the amount, if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently connected miscellaneous petition is closed.

27.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To
The Motor Accidents Claims Tribunal,
Principal District Court,
Pudukkottai.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

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