



C.M.A.(MD) No.115 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 31.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.115 of 2018

Venkatesh

... Appellant/Petitioner

vs.

1.The Branch Manager,
New India Assurance Company Limited,
having office at Karumal Center, GH Road,
Munnar, Idukki District, Kerala State.

2.The Branch Manager,
TATA AIG General Insurance Company Ltd.,
Post Box No.9407, MIDC Post Office,
Sakkala, Mumbai.

3.Balu

4.Ramkumar

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1983, against judgment and decree dated 20.06.2017 passed in M.C.O.P.No.88 of 2012 on the file of the Motor Accidents Claims Tribunal, Additional District & Sessions



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Court, Theni-Periyakulam.

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For appellants	: Mr.S.Vashik Ali for Mr.G.Mohankumar
For Respondents	
For R1	: Mr.S.Sarvagan Prabhu
For R2	: Mr.B.Vijaykarthikeyan
For R3 & R4	: No appearance

J U D G M E N T

Being aggrieved by the order of dismissal dated 20.06.2017 passed in M.C.O.P.No.88 of 2012 on the file of the Motor Accidents Claims Tribunal/Additional District Court, Periyakulam, Theni, the injured has preferred this appeal.

2. M.C.O.P.No.88 of 2012 was filed by one Venkatesh/claimant, who travelled as pillion in the motorcycle (Reg.No.KL-06-E-9213) rode by one Ganesh Kumar, who died in the accident, claiming compensation of Rs.5,00,000/- for the injuries suffered by him due to the accident that occurred on 01.02.2012. Another petition in M.C.O.P.No.87 of 2012 was filed by the parents of the deceased Ganesh Kumar (rider of the motorcycle bearing Reg.No.KL-06-E-9213).



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3. Despite the receipt of notice, the respondents 3 and 4 neither appeared nor entered appearance through counsel.

4. Heard learned counsel for the appellant and the learned counsels for the respondent 1 and 2.

5. Common evidence was recorded in M.C.O.P.No.87 of 2012 and common order was passed as mentioned supra.

6. Before the Tribunal, in order to substantiate the details of claim petitions, three witnesses were examined and fifteen documents were marked. Ex.P1 is the copy of the First Information Report. On the respondents' side, six witnesses were examined and ten documents were marked. Ex.R5 is the Final Report filed in Cr.No.46 of 2012 of P.C.Patti Police Station. P7 is the true copy of the policy of insurance pertaining to the motorcycle/TN-60-E-4839 (third respondent/Balu's vehicle).

7. Upon consideration, the Tribunal held that by relying upon the testimony of P.W.2/Venkatesh, it was not proved that because



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of the rash and negligent driving of the rider of TN-60-E-4839, the accident occurred and dismissed the claim petition.

8. P.W.2/Venkatesh and R.W.6/Balu are the ocular witnesses. It has come on record from the evidence of P.W. 2/Venkatesh that on 01.02.2012, the deceased Ganesh Kumar rode the motorcycle bearing registration No.KL-06-E-9213. While they were proceeding towards east to western side along Theni-Bodi Main Road, in front of Renuka Mill gate, at about 5.23 p.m., a lorry came from west to east direction and having seen the said lorry, the deceased Ganesh Kumar applied break and the motorcycle bearing registration No.TN-60-E-4839, which came from behind, hit on the rear side of the motorcycle and both of them sustained serious injuries, fell down and the said Ganesh Kumar succumbed to the injuries.

9. The rider of the motorcycle bearing registration No.TN-60-E-4839/R.W.6 would state that on 01.02.2012, when he was proceeding from Theni-Bodi at about 5.00 p.m., the accident occurred. As the Police was searching for him, he surrendered



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before the Judicial Magistrate Court, Theni, on 18.06.2012 and handed over his licence, insurance policy to the P.C.Patti Police Station.

10. During his cross-examination, when a question was posed to him that on what date the accident occurred, he answered that it is not known to him. He has also stated that he was examined by the insurance company officials. When a question was posed to him as to the age of the deceased, he has answered that his age would be 37 years. It is relevant to note that after the accident, he did not intimate to the Regional Transport Office regarding the change of colour of his motorcycle. But, no question was posed as to whether he changed the colour of the motorcycle or not.

11. Ex.P1 is the copy of the First Information Report. The date of the accident is 01.02.2012. On the same date, First Information Report was registered, upon the statement of P.W. 2/Venkatesh in Cr.No.43 of 2012.



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12. A careful perusal of the entire testimony of R.W.6/Balu reveals the fact that he was present at the occurrence place at the time of accident, as he has stated that the age of the deceased would be 37 years. From the evidence of R.W.1/Assistant Road Transport Officer, Theni and Sub-Inspector/R.W.2 and Inspector of Police of P.C.Patti Police Station/R.W.3, it appears that the motorcycle of R.W.6/Balu was not sent for inspection to the Regional Transport Office, Theni. R.W.6/Balu was not cross-examined by the claimant side, however, cross-examined by the counsel for the second respondent/insurance company. R.W.6/Balu was not at all cross-examined as to how the accident occurred and even in his proof affidavit, he has not explained properly in this regard.

13. On behalf of R.W.6/respondent No.3/Balu, petition was moved under Section 436 of Cr.P.C. before Theni Judicial Magistrate on 18.06.2012 in Cr.No.43 of 2012 of P.C.Patti Police Station and on the same date, the bail petition was ordered to be allowed. Since because of the order of bail was granted as regards the third respondent herein (R.W.6), nothing could be presumed.



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WEB COPY 14. Adding to these details, discharge summary issued by Coimbatore Ganga Medical Centre, dated 02.02.2012 is Ex.P9, wherein it has been stated that the patient (Venkatesh) travelled in motorcycle and hit by a four wheeler. In the examination details, it has been mentioned that the patient was conscious. Ex.P1/FIR reveals the fact that initially, he was admitted at Theni Government Hospital and his statement was recorded at Theni Government Hospital. In these circumstances, the first treatment record, which is vital document, is not filed in this Court.

15. The Tribunal has discussed in detail about the testimony of ocular witnesses and other witnesses and came to the conclusion that as narrated by P.W.2/Venkatesh, the accident did not occur and as to how the accident occurred was not properly explained. Therefore, the Tribunal chose to dismiss the claim petition. This Court finds no good reason to disturb the findings of the Tribunal. So also, this Court does not find any infirmity and perversity in the said finding.



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16. Based on the above said discussions and observations,

WEB COM this Civil Miscellaneous Appeal stands dismissed. No costs.

31.01.2025

(2/2)

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd

To

1.The Additional District & Sessions Judge,
The Motor Accidents Claims Tribunal,
Additional District & Sessions Court,
Theni-Periyakulam.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI,J

apd

Pre-delivery order made in
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