

C.M.A.(MD) No.44 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 28.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.44 of 2023

and

C.M.P.(MD)Nos.500 of 2023 & 7635 of 2024

United India Insurance Company Ltd.,
Promenades Road, Contonment,
Trichy-1.

... Appellant/2nd respondent

vs.

- 1.Kulandai Terasa (died)
- 2.Manoj Kumar
- 3.Minor Mohanappriya
- 4.Minor Naresh Kumar

Minors/respondents 3 & 4 are represented
by 2nd respondent/brother

- | | |
|-----------------|---|
| 5.Banumathy | ... Respondents 1 to 5/Petitioners |
| 6.Isaac Jebaraj | ... 6 th Respondent/1 st respondent |

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against judgment and decree dated 08.03.2021 passed in M.C.O.P.No.958 of 2015 on the file of the



C.M.A.(MD) No.44 of 2023

Motor Accidents Claims Tribunal/Special Court for MCOP Cases,
Tiruchirappalli.

For appellant : Mr.A.Ilango

For Respondents

For R2 to R5 : Mr.N.Sudhgar Nagaraj

For R1 : Died

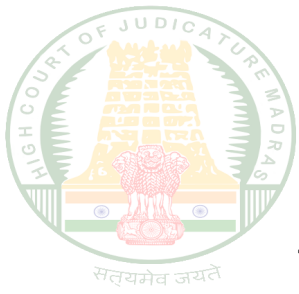
For R6 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company/second respondent against the award dated 08.03.2021 made in M.C.O.P.No.958 of 2015, on the file of the Motor Accidents Claims Tribunal/Special Court for MCOP Cases, Tiruchirappalli, as regards liability issue.

2. Heard the arguments of learned counsel for the appellant and the respondents 2 to 5.

3. Despite the receipt of notice, the sixth respondent neither appeared nor represented through his counsel.

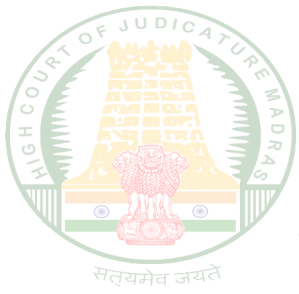


C.M.A.(MD) No.44 of 2023

4. The claim petition was filed by the dependents of the deceased Sasikumar claiming compensation of Rs.15,00,000/- for the death of Sasikumar on account of the accident that occurred on 09.04.2015.

5. At trial, on the claimants' side, two witnesses were examined and six documents were marked. On the second respondent/insurance company side, three witnesses were examined and two documents were marked. Through R.W.2, Ex.X1 was marked and through R.W.3, Exs.X2 to X4 were marked.

6. Upon consideration, the Tribunal, by analysing the testimony of the ocular witnesses (evidencr of P.W.2 and R.W.2), held that because of the rash and negligent driving of the driver of the first respondent vehicle, the accident occurred and hence, the second respondent/insurance company, who is the insurer of the first respondent's vehicle, was made liable to pay compensation. Against this finding, the Insurance Company has preferred this appeal.



C.M.A.(MD) No.44 of 2023

7. Among two witnesses examined by the claimants side,

WEB COPY P.W.2 /Innasimuthu was examined as ocular witness.

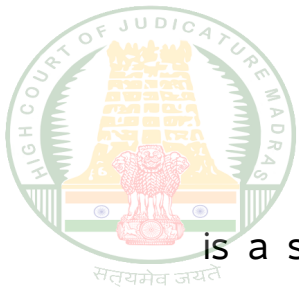
8. It is the evidence of P.W.2 that on 09.04.2015, at about 11.30 p.m. along Trichy-Vayalur road, in front of SMK Thirumana Mandapam, the accident occurred. It is his further evidence that when he was standing outside the said Thirumana Mandapam, a person was walking along the mud road and a mini door auto bearing registration No.TN-48-E-6582, came in a rash and negligent manner, came from north to south direction, hit upon the said pedestrian from behind. Due to the said impact, he sustained injury over the head and both hands. The driver of the auto told him that he knew the injured person and he would admit him in hospital. During his cross-examination, he has deposed that since his nephew's marriage was about to take place on 10.04.2015, he went to the said Thirumana Mandapam on 09.04.2015 night. When a suggestion was posed to him that the deceased due to intoxication lost his balance, fell down and died, he denied the suggestion.



C.M.A.(MD) No.44 of 2023

WEB COPY 9. It is the evidence of R.W.1/Sakthivel (driver of the first respondent auto) that as usual on 09.04.2015, while he was waiting near SMK Thirumana Mandapam with his mini door auto for trip, at about 11.30 p.m, Sasikumar, who is known to him, due to intoxication, lost his balance and fell down. He would further depose that as the injured, who is known to him, had sustained serious injuries and he also knew his residence and the inmates of the injured, he went and left the injured at his residence. When he called his wife to the hospital, she told him that he would become alright, if he sleeps. Further, he came to know that on the next day, the injured was died at the hospital. A wrong complaint was lodged against him as if he drove the auto in a rash and negligent manner and hit upon the deceased, which is not correct. It is pertinent to note that he knew the fact that the accident case was registered against him on the next day.

10. He would further state that he was arrested by the Police and released on bail. Had it been true, R.W.1 ought to have lodged complaint. The fact that he did not lodge any complaint against him,



C.M.A.(MD) No.44 of 2023

is a strong factor to disbelieve his version. When a person with head injury and other injuries brought to his home, immediately the inmates of the injured would have shown interest to go to the hospital. The evidence of R.W.1 to the effect that the wife of the injured told him that if the injured sleeps, he will become alright, is not acceptable.

11. It appears that the deceased was taken to the hospital on 09.04.2015 at about 11.30 p.m. by his wife. The wife of the deceased is no more. From the postmortem certificate, it is deducible that he suffered fracture of 1 to 10 ribs, vertical linear fracture of 10 c.m. involving left temporro-parietal bone.

12. Through R.W.3, who is the Manager of the SMK Thirumana Mandapam. a receipt book of the said Thirumana Mandapam Ex.X4 is marked. He was examined in order to prove the fact that on 10.04.2015, no marriage was held in the said Kalayana Mandapam. Ex.X3 is the booking details dated 10.04.2015. From the perusal of Exs.X3 and X4, it appears that one Mathivannan of Veeraganallur has paid advance amount of



C.M.A.(MD) No.44 of 2023

Rs.30,000/- on 08.01.2015 and the date of marriage is 10.04.2015

WEB COPY

and later, it was struck out and corrections have been made. In the entire receipt book, there is no corrections except the receipt dated 08.01.2015. Therefore, it appears that the date 10.04.2015 is manipulated and some other date was written.

13. It is the evidence of R.W.3/Manager of SMK Thirumana Mandapam that xerox copies of the diary dated 09.04.2015 and 10.04.2015 and the receipt book have been produced by him and they have been marked as Exs.X3 and X4, respectively. He has also acceded to the fact that he has effected corrections in several copy of the receipts. He has also conceded that 10.04.2015 is an auspicious day.

14. From a careful perusal of the testimony of R.W.3, it appears that Exs.X3 and X4 are not acceptable as they are manipulated. Based upon the manipulated details, he has given evidence. Therefore, the theory put forth by the second respondent insurance company to the effect that on 10.04.2015, no marriage was held, is totally false.



C.M.A.(MD) No.44 of 2023

WEB COPY

15. A deep perusal of the evidence of P.W.2 coupled with R.W.1 and R.W.2 and the relevant documents, it is pellucid that on the date of accident itself, at about 11.30 p.m, the deceased was taken to hospital, while he was alive. As per the testimony of P.W. 2, due to the rash and negligent driving of the driver of the first respondent auto/R.W.1, the accident occurred and due to the said impact, the deceased Sasikumar sustained fatal injuries and he succumbed to the said injuries.

16. In the given circumstances, the Tribunal, by rejecting the testimony of the respondents' side evidence and by relying upon the testimony of P.W.2, has come to the conclusion that because of the rash and negligent driving of the driver of the first respondent auto, the accident occurred and the deceased suffered fatal injuries. In such a view of the matter, this Court does not find any good reason to interfere with the finding of the Tribunal.



C.M.A.(MD) No.44 of 2023

WEB COPY 17. In the result,

(i) The Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(ii) The compensation of Rs.14,42,660/- awarded by the Tribunal is confirmed.

(iii) The appellant/Insurance Company is directed to deposit the enhanced compensation amount of Rs.14,42,660/- (less the amount already deposited if any) with interest at 7.5% p.a. from the date of filing of the claim petition till the date of realisation to the credit of M.C.O.P.No.958 of 2015 on the file of the Motor Accidents Claims Tribunal/Special Court MCOP Cases, Tiruchirappalli, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the claimants/respondents 2 to 5 are permitted to withdraw their share along with interest, as



C.M.A.(MD) No.44 of 2023

per the apportionment made by the Tribunal, after adjusting the amount, if any already withdrawn by filing necessary application before the Tribunal.

28.01.2025

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

To

1.The Special Judge,
The Motor Accidents Claims Tribunal/Special Court MCOP Cases,
Tiruchirappalli,

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



WEB COPY



C.M.A.(MD) No.44 of 2023

R.KALAIMATHI,J

apd

Pre-delivery order made in
C.M.A.(MD) No.44 of 2023

28.01.2025