

C.M.A.(MD)No.756 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.756 of 2018

1.Thirumagal

2.Minor Nisha

3.Minor Mohankumar

(Minor petitioners through their mother
and next guardian 1st petitioner herein)

... Appellants

Vs.

1.Chellathurai

2.Natturayan

3.Oriental Insurance Company Ltd.,
Rep. By its Branch Manager,
First Floor, No.82, Dr.Thirumalai Plaza,
New Dharapuram Road,
Palani – 624 601.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 28.04.2016, in M.C.O.P.No.11 of 2013 on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Court, Theni, at Periakulam.



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For Appellant

: Mr.J.Sankara Pandian

For M.Sarangan

For R1 & R2

: Mr.Sachin Rahul

For Mr.S.Sankara Pandian

For R3

: Mr.C.Jawahar Ravindran

JUDGMENT

Challenging the dismissal of judgment and decree passed in M.C.O.P.No. 11 of 2013 dated 28.04.2016, the claimants have filed this Civil Miscellaneous Appeal.

2.For the sake of convenience, the parties are arrayed herein as per the ranking in M.C.O.P.No.11 of 2013.

3.The factual matrix of the present case, briefly stated, are as under:-

The deceased person was working with the second respondent, who is the owner of the trailer. The first respondent is the owner of the tractor. The second respondent is the owner of the trailer. The insurance company with which the trailer is insured is the third respondent. On 07.05.2012, the second respondent required the deceased Perumal to bring sand from Nallusari Kanmoi to his agriculture land, for which, the first respondent along with the deceased and one Sasi, involved in digging out the sand from the Nallusari Kanmoi and



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thereafter transferring the same. The first respondent had driven the tractor in a rash and negligent manner and as the result of which, the trailer has capsized.

Following which, the said Perumal sustained grievous injuries and his back bone was broken. As the result of which, he was admitted at the first instance at Theni Government hospital and from where he was referred to higher medical treatment to the Government Rajaji Medical College, Madurai, on 08.05.2012. After treating him for seven days on 14.02.2015, the said Perumal passed away at 18.00 hours. Claiming that the deceased had died because of rash and negligent driving of the first respondent, the legal heirs of the deceased Perumal laid M.C.O.P.No.11 of 2013 before the learned Tribunal.

4.The learned Tribunal has examined three witnesses and 7 documents, Ex.P1 to Ex.P7 were marked on the side of the petitioners. Three witnesses were examined and four documents Ex.R1 to Ex.R4 were marked on the side of the respondents. On the basis of the arguments made by the respective parties, the evidence deposed and the documents marked, the learned Tribunal proceeded to observe that the cause of death of deceased was due to the attack by one bull and not due to the accident. On the basis of which, M.C.O.P. was dismissed. Challenging the same, the appellants have filed this Civil Miscellaneous Appeal.



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5.The learned counsel appearing for the appellants relied upon the evidence deposed by one Doctor, namely, Kannan, who was examined as P.W.3 and submitted that P.W.3 has promptly deposed his evidence in cross examination that the kind of the back bone injury suffered by the deceased to the extent of breaking will not be normally sustained by bull attack but such kind of injury will happen, only if a person fell from a higher position or a heavy object, which happened in the case of the injured. He also pointed out that the observation made by P.W.3 that the entry made in the accident register of the respective hospitals need not be correct.

6.Further relying upon the evidence of P.W.2, who is none other than an eye witness Manimegalai, the learned counsel pointed out that P.W.2 admitted in her proof affidavit that the trailer of the tractor has capsized and one of the traveller in the trailer was immersed in the mud, which capsized from the trailer and when the said eye witness had reached the said destination, the efforts had being undertaken to rescue the person by removing the mud. However, during cross examination, she has denied the version made by her in the proof affidavit. Despite the presence of such an evidence by the eye witness concerned, the learned Tribunal proceeded to observe that the said P.W.2 is not



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at all an eye witness. The learned counsel further insisted that the deceased is survived by two minor children and a wife, who are suffering in penury. The welfare legislation should have been dealt with by the learned Tribunal, to the favour of the claimants.

7.Per contra the learned counsel for the respondents 1 and 2 submitted that such an accident has never taken place. It was only the first respondent himself who admitted the deceased in the hospitals both in the Theni Government Hospital as well as Madurai Rajaji Government Hospital and hence, the claim of the appellants is not sustainable.

8.The learned counsel for the third respondent submitted that the date on which, the accident is claimed to have occurred is 07.05.2012 and he also pointed out that the learned Tribunal promptly recorded the fact that the deceased person was conscious at the time when he was admitted both in the Theni Government Hospital on 07.05.2012 as well as when he was admitted in Madurai Rajaji Government Hospital on 08.05.2012. In such a situation, had he been injured because of the accident as claimed by the claimants, the injured would have informed the authorities that the fracture in backbone has been incurred by him, due to the accident, which had happened. However, he has not



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done so. The accident register in both the hospitals, has been marked as Ex.P7

in which, it is clearly recorded that the accident had happened because the deceased has been hit by the bull. That apart, he pointed out that had the injured has been sustained by the deceased by means of an accident, immediately the claimants would have preferred a complaint before the jurisdictional police station. However, in the instant case, only after the death of the injured on 14.05.2012, the claimants have lodged a complaint before the jurisdictional police station. Hence, he categorically submitted that it is not necessary to interfere with the judgment of the learned Tribunal.

9.Heard the learned counsel on either side and carefully perused the materials available on record.

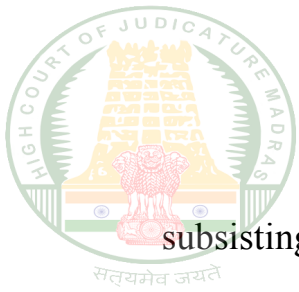
10.As contended by the learned counsel for the third respondent, a careful perusal of the FIR, which has been marked as Ex.P1 would reveal that Veerapandi Police Station has registered a FIR on 14.05.2012 at 15.00 hours in Crime No.123 of 2012 on the information of Thirumagal, who is the first appellant herein. The reasons for delay in reporting by the complainant has been stated that one Chelladurai, who is the suspected accused, had admitted the deceased on the guise of being attack by the bull. The narration in the FIR



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has been recorded in such a way that the defacto complainant's husband i.e., deceased informed that he had sustained injuries not because of the attack by bull but because of the capsizing of the trailer driven by the first respondent Chelladurai. However, the time of the death of the deceased recorded in the FIR is 08.15 a.m., on 14.05.2012. So it is clear that, only after the death of her husband on 14.05.2012 at 08.15 a.m., she has lodged a complaint before the Veerapandi Police Station on 14.05.2012 at 18.00 hours. Though the learned counsel for the appellant relied upon the evidence of P.W.3, one Doctor Kannan, it is clear that he is not the Doctor, who actually treated the deceased. He had retired at the time of the deposing evidence and he has been running a Private Hospital, at Theni. Based on the post mortem report, which is marked as P.W.4, he had given his opinion before the learned Tribunal. As far as the *lis* in hand is concerned, the evidence of Doctor, who has no connection with the treatment, which has been given to the deceased is not admissible. Only in view of the same, the learned Tribunal proceeded to reject the evidence of P.W.3.

11.That apart, the learned counsel for the third respondent pointed out that at the time of accident, the tractor was not insured with the third respondent. It is only on 17.05.2012, the first respondent has availed insurance policy for the tractor. However, the currency of insurance for the trailer was



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subsisting till 18.07.2012.

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12.Ex.P4 would reveal the deceased appeared to have died because of spinal cord injury. The ante mortem injuries noted in the body are abrasion on the left leg in the middle, abrasion on left ankle and fracture of thoracic vertebra 12 over lumbar vertebra 1 with partial laceration of underlying spinal cord. No abrasion or any damage to the back of the deceased has been noted in the post mortem certificate. Though the post mortem certificate Ex.P3 would narrate that the injuries sustained is due to the accident, even it is considered that it could be based on the FIR registered, I am of the considered view that had he been attacked by the bull obviously even if there is no piercing marked atleast some kind of swelling ought have appeared on the back of the deceased. In the absence of the same, I find it necessary to remand back the case to the learned Tribunal, giving opportunity for the claimants to prove before the learned Tribunal by producing appropriate medical records to prove that the cause of death was only because of the accident.



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14. Accordingly, this Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.

17.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

Note: The Registry is directed to return the records to the lower Court.

To

1. The Motor Accidents Claims Tribunal,
Additional District and Sessions Judge, Theni, Periakulam
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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