



C.M.A.(MD)No.1203 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 09.07.2025

CORAM

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

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1.Vetrivel
2.Minor Veeralakshmi
3.Minor Eswari
4.Minor Murugaperumal
(Minor appellants 2 to 4 through
their mother, guardian and next friend
Vetrivel the 1st appellant herein) ... Petitioners/Appellants
Vs.

1.Mary Madalenem

2.The Branch Manager,
SBI General Insurance Company Limited,
Natraj 101, 201 & 301, Junction of Western,
Express Highway & Andheri Kurla,
Andheri (East) Mumbai. ..Respondents/Respondents

3.Paripooranam ..Respondent
(Respondent No.3 is Suo-motu impleaded as per the order of this Court
dated 05.12.2024 made in CMA(MD) NO.1203 of 2022 by RKMJ.



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Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.11.2016 made in M.C.O.P.No.942 of 2014 on the file of the Motor Accident Claims Tribunal/Special Sub Court, Tirunelveli.

For Appellants	: Mr.R.Jim
For R1	: Mr.M.Surya Kumar for Mr.B.Rajesh Saravanan
For R2	: Mr.Gokul Raj for Mr.G.Mohan Kumar
For R3	: Mr.Pragadesh Ganapathy for Mr.R.J.Karthick

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the claimants against the award dated 04.11.2016 passed in MCOP No.942 of 2014 by the Special Sub-Court for Motor Accident Claims Tribunal Cases, Tirunelveli. Wherein the first respondent alone was directed to pay the compensation to the claimants herein.

2.The parties are indicated herein as per their litigative status and ranking before the trial Court.



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WEB COPY 3. Heard the arguments of the learned counsel for the appellants/claimants and the learned counsels for the respondents.

4. The claim petition was filed by the legal heirs of deceased Sivanananijaperumal claiming compensation of Rs.20,00,000/- for the death of the above said person on account of the road traffic accident that had occurred on 14.08.2014.

5. The case of the claimants is that the deceased Sivanananijaperumal was working as a loadman and earning a sum of Rs.15,000/- per month. On 14.08.2014, the said Sivanananijaperumal travelled as a loadman in a Container Lorry bearing Registration No.TN-20-BQ-0466 which belongs to the first respondent and insured with the second respondent/Insurance Company. The Lorry was proceeding from Tutukorin to KCP Co., Pollachi, with waste paper load. When the lorry was proceeding near Ramanatha Nagar, Palani, as the driver drove the vehicle in a high speed, in a turn the lorry got capsized and the said Sivanananijaperumal who travelled in the lorry succumbed to the injuries on the spot. As the accident occurred due to



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the negligent driving of the driver, the first and second respondents are jointly and severely liable to pay the compensation to the claimants herein.

6.On behalf of the first respondent, namely, the owner of the lorry, it has been averred that the deceased was working as a loadman under the first respondent and was earning a sum of Rs.10,000/- and on the date of accident also he travelled in the abovesaid container lorry as a loadman.

7.Whereas on the side of the second respondent/Insurance Company, it has been stated that the mother of the deceased Sivanananijaperumal namely Paripooranam is alive and she is not added as a party to the claim petition and that the deceased travelled in the said lorry as a gratuitous passenger. The deceased is the co-brother of the driver of the container lorry. Therefore, the second respondent/Insurance Company is not liable to pay the compensation to the claimants herein. Therefore, the first respondent has permitted gratuitous passenger to travel in the lorry thereby, violated the policy condition.

8.Whether the deceased travelled as a loadman or as a gratuitous



passenger is the moot question to be answered. On the claimants' side, one

Paramasivam who travelled as a cleaner in the above said container lorry has been examined as P.W.2. It is his evidence that on the date of accident, the deceased Sivanananiaperumal travelled in the above said container lorry as a loadman and due to the rash and negligent driving by the driver of the lorry in the turning, the lorry turned topsy turvy and the deceased who was sitting inside the lorry, fell down from the left side window and got struck under the lorry and died.

9.On the side of the second respondent/Insurance Company, the Assistant Manager Mr.Suresh has been examined as R.W.1. It is his evidence that as per the Investigator Report, the deceased Sivanananiaperumal travelled as gratuitous passenger in the Goods Carrier lorry.

10.Whereas in the FIR, it has been stated that the deceased in order to go to Ernakulam and he wanted to get down on at Pollachi he travelled in the lorry. Law is well settled that the First Information Report is not a substantial piece of evidence and based on the information by a person namely complainant, first information report is registered. First Information



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Report can be used for corroboration and for contradiction. It appears that the driver of the lorry and the deceased are close relatives. P.W.2-Paramasivam would also state that he is a far relative of the deceased. Since because P.W.2 is a far relative of the deceased, his evidence cannot be rejected. The details of the evidence have to be gone into and for the simple reason that he is related to the deceased cannot be a reason to reject in toto. On a thorough perusal of evidence of P.W.2 during the cross examination of P.W.2, no answer advantageous to the Insurance Company was got and therefore it should not lie in the mouth of the Insurance Company that the deceased Sivanananijaperumal travelled as a gratuitous passenger.

11.Of course, R.W.1 is the official of Insurance Company whereas P.W.2 is an ocular witness and his evidence has to be placed on a high pedestal and relying upon the evidence of P.W.2 and counter of first respondent (owner of the container lorry), it is made clear that the deceased Sivanananijaperumal travelled in the lorry as a loadman. Therefore, the second respondent/Insurance Company is liable to pay the compensation to the legal heirs of the deceased.



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12.The finding of the tribunal to the effect that the evidence of eye witness P.W.2-Paramasivam cannot be relied upon for the reason that he is a relative, has to be necessarily interfered with. Hence, the finding of the Tribunal that the first respondent alone is liable to pay compensation stands set aside. Therefore, the first respondent/owner of the vehicle and the second respondent/Insurance Company are jointly and severally liable to pay the compensation to the claimants herein.

13.Third respondent, Paripooranam, on summon appeared through video conference. In her counter, she would state that she is also entitled for compensation due to the death of her son Sivanananijaperumal. In the given circumstances, she is granted compensation of Rs.1,00,000/-.

14.In the result,

- (i) The Civil Miscellaneous Appeal is allowed. No costs.
- (ii) The compensation awarded by the Tribunal stands set aside.
- (iii) The 1st respondent/owner of the vehicle and the 2nd respondent/Insurance Company are jointly and severally liable to pay compensation to the claimants herein.



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(iv) The respondents 1 and 2 are directed to deposit the compensation

amount i.e., **Rs.17,00,000/-** (less the amount already deposited if any) together with interest at the rate of **7.5%** per annum from the date of claim petition till the date of realisation to the credit of M.C.O.P.No.942 of 2014, on the file of Motor Accident Claims Tribunal / Special Judge, Tirunelveli, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(v) On such deposit being made, the 1st appellant/wife is entitled to receive Rs.7,00,000/- and the appellants 2 to 4 / Children of the deceased are entitled to receive Rs.3,00,000/- each and the 3rd respondent/mother of the deceased Paripooranam is entitled to receive Rs.1,00,000/-.

(vi) The appellants/claimants and third respondent are permitted to withdraw their shares along with interest and costs, less the amount if any already withdrawn, by making necessary cheque applications by the appellants/claimants and third respondent before the Tribunal. The third respondent shall pay the requisite Court fee for the compensation amount, ordered in her favour. The Tribunal below shall disburse the compensation amount upon production of the certified copy showing proof of payment of Court fee by the claimants/3rd respondent.



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Index: Yes/No
Speaking Order/Non Speaking order
Neutral Citation Case:Yes / No
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To

- 1.The Special Sub Court,
Tirunelveli.
2. The Section Officer,
V.R Section,
High Court, Madras.



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R.KALAIMATHI.J.,

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