



C.M.A(MD)No.285 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 18/12/2025

CORAM

**THE HONOURABLE MR JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MS JUSTICE R.POORNIMA**

**C.M.A(MD)No.285 of 2024
and
CMP(MD)No.3745 of 2024**

The Branch Manager,
United India Insurance Company Limited,
Shop No.104-A, Lakshmi Complex,
Avinasi Road,
Pudur Main Road,
Peelamedu,
Near Coimbatore RTO Office,
Coimbatore-641 004.

: Appellant/3rd Respondent
Vs.

1.Thangappan Pillai
2.Rajini
3.Abhilla
4.Akila

: Respondents 1 to 4/
Petitioners 1 to 4

5.Venkidukumar
6.Uma Maheshwari
7.The Divisional Officer,

: 5th Respondent/1st Respondent
: 6th Respondent/2nd Respondent

The National Insurance Company Ltd.,
Parameshwaan Pillai Bavan,
Hospital Road,
Kollam District-691 001.
Kerala State.

: 7th Respondent/4th Respondent



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Prayer:- This Civil Miscellaneous Appeal is filed under under Section 173 of the Motor Vehicle Act, 1988, to set aside the award, dated 03/08/2023 passed in MCOP No.41 of 2019 on the file of the Motor Accidents Claims Tribunal/Additional District Court (FTC), Tenkasi.

For Appellant : Mr.A.Ilango
For R1 to R4 : Mr.L.Shaji Chellan
For R5 and R6 : Unserved
For 7th Respondent : Mr.A.S.Mathialagan

J U D G M E N T

(Judgment of the Court was made by the Hon'ble **G.K.ILANTHIRAIYAN.J.**)

This Civil Miscellaneous Appeal is directed against the award, dated 03/08/2023 passed in MCOP No.41 of 2019, by the Motor Accident Claims Tribunal/Additional District Judge (FTC), Tenkasi.

2.The appellant is the third respondent in the claim petition. The respondents 1 to 4 are the claimants before the Tribunal.



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3.The case of the claimants is that on 25/12/2017 at about 12.45 pm, when the deceased Athul was proceeding in his motorcycle bearing registration No.KL-24-P-2333 with a pillion rider namely Rubesh from north to south in Sengottai-Panpozhi road near Joseph Matriculation School northern side of Thenpothai in a slow speed with care and control by following traffic Rules, in the opposite direction from south to north the 5th respondent herein drove the Lorry bearing registration No.TN-40-F-2847 in a rash and negligent manner without following the traffic Rules and dashed against the two wheeler. In that process, the rider and the pillion rider of the two wheeler were thrown away and both sustained grievous injuries. The rider of the motor cycle succumbed to injuries on the spot. The Lorry owned by the 6th respondent herein was insured with the appellant herein. Therefore, the claimants being the legal heirs of the deceased filed the claim petition.

4.The insurer of the Lorry i.e., the appellant herein filed a counter stating that the accident had occurred only due to rash and negligent driving of the rider of the motor cycle. In fact, the complaint was lodged as against the rider of the motor cycle and FIR got registered against him. Charge sheet also laid against him and it was abated since the rider of the motor cycle died during the accident.



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5.The insurer of the motorcycle namely the 7th respondent herein filed a separate counter stating that the first claimant submitted a representation before the Superintendent of Police, Tirunelveli, for fair and proper investigation, since FIR has been registered as against the rider of the motorcycle. The accident did not occur due to the rash and negligent driving of the rider of the motorcycle.

6.Before the Tribunal, on the side of the claimants, two witnesses were examined as PW1 and PW2 and marked 12 documents as Exs.P1 to P12. On the side of the Insurance Companies, they examined three witnesses as RW1 to RW3 and marked 2 documents as Exs.R1 and R2.

7.On the basis of the oral and documentary evidence, the Tribunal concluded that the accident occurred only due to the rash and negligent driving of the 5th respondent herein. Further, considering the age and income of the deceased, a compensation was awarded to the tune of **Rs.22,44,400/-**. The entire liability was fixed on the appellant Insurance Company since the appellant is the insurer of the 5th respondent's vehicle and directed the appellant to pay the award amount to the claimants. Aggrieved by the same, the present appeal.



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8.The insurer of the 5th respondent namely United India Insurance

Company filed this appeal and raised the following grounds:-

The complaint was lodged by the 5th respondent herein, who is the driver of the Lorry, in which specific allegation was made that when the deceased was trying to overtake a TNSTC Bus which was coming in front of his motorcycle, hit the Lorry's front side right hand bumper which was coming from the opposite direction and fell down and sustained fatal injuries. In fact, after investigation, charge sheet was laid against the rider of the motorcycle and since the deceased died, all the charges were abated against him. The rough sketch prepared from the scene of occurrence, which was marked as Ex.R1 also revealed that the rider of the motorcycle hit the Lorry on its front side right side bumper, which shows that while the rider of the motorcycle was trying to overtake a TNSTC Bus, which was coming on the same direction in front of his vehicle dashed against the Lorry and fell down. The 5th respondent drove the Lorry on its left hand side from south to north by following traffic rules. Further, the deceased did not wear a helmet. As per the postmortem report, the deceased died due to the head injuries which would go to prove that the deceased did not wear the helmet and it is a clear violation of Section 129 of the Motor Vehicles Act. Therefore, the rider of the



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motorcycle being the tortfeasor, the claimants are not entitled for any compensation.

9.Per contra, the learned counsel for the respondents 1 to 4/claimants submits that though FIR was registered as against the rider of the motorcycle, it is not proved that the accident occurred only due to the rash and negligent driving of the rider of the motorcycle. Further, the rider of the motorcycle and the pillion rider were hit by the 5th respondent by his Lorry while driving the Lorry in a rash and negligent manner and due to which, they fell down and sustained grievous injuries. In fact, the rider of the motorcycle died on the spot. Therefore, they were not in a position to lodge any complaint. On the basis of the complaint received from the 5th respondent, the Police conveniently registered the FIR as if the rider of the motorcycle drove it in a rash and negligent manner and invited the accident. In fact, the first claimant submitted a detailed representation before the Superintendent of Police, Tirunelveli, to conduct a proper and fair investigation in the FIR registered by the jurisdictional Police and therefore, the Tribunal has rightly concluded that the accident occurred only due to the rash and negligent driving of the 5th respondent and fastened the entire liability on



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the appellant herein. Hence, it does not warrant any interference by this Court.

10.Heard both sides and perused the materials available on record.

11.The only point to be considered in this appeal is that whether the accident occurred due to the rash and negligent driving of the rider of the motorcycle or the 5th respondent herein.

12.Immediately after the occurrence, the 5th respondent lodged a complaint and the same was registered in Crime No.442 of 2017 on the file of the Inspector of Police, Senkottai Police Station. It shows that the accident occurred due to the rash and negligent driving of the rider of the motorcycle. When he was trying to overtake a TNSTC Bus which was going on the same direction in front of the deceased vehicle, without noticing the opposite side, the rider of the motorcycle hit the right side corner of the bumper of the Lorry and fell down and due to which, both the rider and the pillion rider of the motorcycle sustained head injuries and the rider of the motorcycle died on the spot. It also shows that the



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rider of the motorcycle did not wear the helmet and as such, he succumbed to injuries on the spot. In fact, the Inspector of Police, Senkottai Police, after completion of the investigation, filed the charge sheet against the rider of the motorcycle. Since the rider of the motorcycle died on the spot, the charges were abated against him.

13.The appellant had marked the rough sketch through PW2 as Ex.R1. It shows that the 5th respondent drove his Lorry from south to north in Panpozhi to Sengottai road. The rider of the motorcycle drove his motorcycle from north to south in Sengottai-Panpozhi Road near the Joseph Matriculation School on northern side of Thenpothai. The motorcycle came on the wrong side i.e., right hand side and dashed against the Lorry, which was coming on its left hand side. It is a two way road and as such, both side vehicles have to keep on its left hand side.

14.The specific case of the appellant is that the rider of the motorcycle, while trying to overtake a TNSTC Bus, which was going on the same direction of the motorcycle in front of his vehicle, without noticing the opposite side Lorry, dashed as against the Lorry on its right hand side corner of the bumper. Therefore, there is no evidence to show that the 5th respondent herein drove the Lorry in a rash and negligent



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manner and also on its wrong side. This Court can clearly visualize that the driver of the motorcycle has attempted to overtake a Bus, for which he had shifted to the right side of the two lane road in a rash and negligent manner without noticing the Lorry driven by the 5th respondent that was coming in the opposite direction. Consequently, the driver of the motorcycle had lost control and had dashed against the Lorry. That apart, the rider of the motorcycle did not wear a helmet in order to avoid the head injuries. Therefore, both the documents in Exs.R1 and R2 are clear that the accident occurred only due to the rash and negligent driving of the rider of the motorcycle, due to which, he sustained injuries and died on the spot. Therefore, the Tribunal ought not to have fastened the entire liability on the appellant being the insurer of the 6th respondent Lorry. Without considering the above, the Tribunal has wrongly concluded that the accident occurred only due to the rash and negligent driving of the 5th respondent herein and awarded compensation. The deceased being the tortfeasor is not entitled for any claim and no liability can be fastened on the appellant.

15.In view of the above, the impugned award cannot be sustained and is liable to be set aside. Accordingly, it is set aside.



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16.In the result, this Civil Miscellaneous Appeal is **allowed**. The award, dated 03/08/2023 passed in MCOP No.41 of 2019 on the file of the Motor Accident Claims Tribunal/Additional District Court (FTC), Tenkasi, is set aside. The Appellant Insurance Company is permitted to withdraw the amount lying in the deposit to the credit of MCOP No.41 of 2019, if any, already deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

(G.K.I., J.) (R.P., J.)
18-12-2025

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**G.K.ILANTHIRAIYAN,J
and**

R.POORNIMA,J

er

To,

- 1.The Motor Accident Claims Tribunal,
Additional District Court (FTC),
Tenkasi.
- 2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.

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