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CMA No. 2946 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-04-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

CMA No. 2946 of 2021

and

CMP No.16826 of 2021

The TATA AIG General Insurance Co Ltd
Chennai.

..Appellant

Vs

1. D. Settu

2. Royal Sundaram Insurance Co. Ltd.,
Kimberley Towers, Y-222,
1 St Floor, 2nd Avenue,
Anna Nagar, Chennai 600 040.

3. M.Saraswathi

4. G.Perumal

5. Sathiyaseelan

..Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in MCOP No.235 of 2016 dated 01.03.2021 on the file of the Motor Accidents Claims Tribunal, in the Court of II Additional District Judge, Vellore @ Ranipet.

For Appellant:

Mr.M.B.Raghavan for
M/S.M.B.Gopalan Associates

For Respondents:

Mr.A.Anandadurai for
M/s.N.S.Amarnath for R1
Mr.G.Vasudevan for R2



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JUDGMENT**(Judgment of the Court was delivered by C.V.Karthikeyan J.)**

The second respondent (The TATA AIG General Insurance Co Ltd) in M.C.O.P.No.235 of 2016 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Vellore @ Ranipet, has filed the present Appeal questioning the liability fixed on the ratio of 50% on the appellant herein, who was the insurer for the lorry bearing registration No.TN 73 D 7626 with respect to an accident which had occurred on 28.08.2014 at about 3.50 pm.

2. The accident had occurred on 28.08.2014. The deceased Dinesh Kumar, son of the claimant/first respondent herein. was travelling as a pillion rider in a two wheeler bearing registration No.TN 23 AJ 7195 belonging to the fifth respondent driven by one Kumaresan on Arani road towards Arcot. When their two wheeler reached near Baskaran House, Periyauppupettai, a car bearing registration No.TN 06 H 7715, belonging to the third respondent herein and insured with the second respondent herein, came to a sudden halt on application of break by its driver to avoid hitting a cow and thereupon, the rider of the two wheeler dashed the car and both the rider and the deceased (pillion rider of the two wheeler), having lost control, fell on the road and by then, the Lorry bearing Reg.No.TN 73 D 7626 belonging to the 4th respondent and insured with the second respondent herein, which came in the opposite direction hit against



them and thereby the both the deceased (pillion rider) and the rider of the two wheeler and caused grievous injuries to them, as a result, the pillion rider died on the spot. In this connection an FIR was registered against the driver of the car.

3. While examining the issue as to who was responsible for the accident and who should pay the compensation, the Tribunal had observed as follows:-

"10. On perusal of FIR Ex.P1, it finds that, no evidentiary value has to be taken from the FIR, since it was already closed as RCS by the Police after due and proper investigation. No objection was raised by the complainant namely the rider of a two wheeler against the RCS proceedings filed by the police and the closing of FIR. Hence, the negligence has to be fixed by the Tribunal independently based on the evidence adduced in this case. On considering the nature of an accident, it will clearly reveal that, while the Car was proceeding in front of a two wheeler, a Cow was suddenly crossing the road in front of a Car and hence, the driver of a Car has suddenly applied the brake in order to avoid the hit against the Cow and at that time, the rider of a two wheeler ridden the vehicle very rash and negligent manner along with the deceased as pillion rider without



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keeping the safe distance as per M.V. Rules and hit against the Car with his hand bar of the two wheeler and skidded down on the road.

11. Further, it will clearly reveal that, when the rider of a two wheeler and the deceased were lying on the road, the driver of a Lorry drove the vehicle in a rash and negligent manner and hit against them and caused serious injuries to them. If both the ,rider of a two wheeler and the driver of a Lorry have carefully driven the vehicles, the accident would have been averted. There is no negligence on the part of the driver of a car since he applied the sudden brake due to the sudden crossing of a Cow on the road in front of a car on humanitarian ground. Since, the rider of a two wheeler rode the vehicle "in a rash and negligent manner without keeping a safe distance in front of his vehicle, his hand bar has caused a hit against the Car. Hence, considering all the aspects and evidences in this case, this tribunal came to the conclusion that, the accident was occurred only due to the rash and negligent act of both the rider of a Two-wheeler belonged to the 5th respondent and the driver of a



*Lorry belonged to the 4th respondent on 50:50 ratio
and this point is answered accordingly."*

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4. Learned counsel appearing for the appellant pointed out that the primary accident had occurred only because the driver of the Car had applied sudden break. It was also argued that in the evidence of PW2, who drove the two wheeler and sustained injuries and RW2, the driver of the Lorry that there was crossing of cows and the driver of the Car had applied sudden break. It had been contended by the learned counsel for the appellant that necessary signal should have been given by the car driver before applying the break to prevent the two wheeler from dashing against the car and therefore, contended that negligence should be apportioned on the driver of the car also. It was also contended that the FIR was registered only against the driver of the car, however, he had been exonerated.

5. Learned counsel for the second respondent-Insurance Company for the car, however, stated that the Tribunal had correctly exonerated the second respondent from the liability to pay any compensation.

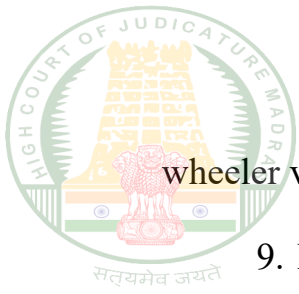
6. We have also taken judicial notice of the fact that the fifth respondent, viz., the owner of the two wheeler had neither appeared nor engaged any counsel to appear before this court and this court had to issue notice by way of substituted service. Therefore, it would be very difficult to recover any amount from the driver of the two wheeler even though steps are taken in the manner known to law. Taking into consideration that the two wheeler had dashed



against the car due to application of sudden break by the driver of the car as a result, both rider and pillion rider of the motorcycle fell on the road and thereupon, the lorry had dashed against them and caused the death of the pillion rider, it is clear that the application of sudden break by the driver of the car had also contributed to the mishap and therefore, we would infer that the proportion of liability with respect to payment of compensation should be apportioned equally among the driver of the lorry, driver of the car and the rider of the two wheeler viz., 1/3 each.

7. The learned counsel for the appellant had not raised any issue relating to the quantum of compensation awarded.

8. We have gone through the award passed by the Tribunal under various heads and we are of the opinion that the same is reasonable and requires no interference, even though an argument is advanced questioning the income and other aspects. In view of the same, the award is modified only with respect to apportionment of liability viz., in equal proportion among the appellant, the second respondent and fifth respondent herein in 1/3 share. In this regard, we place reliance on the judgment in *Khenyei vs New India Assurance Co.Ltd.& Ors* (2015 (9) SCC 273). However, to serve the ends of justice at once, the appellant and the second respondent each shall deposit 50% of the compensation amount within six weeks from the date of receipt of a copy of this judgment and thereafter, shall initiate steps to recover the portion deposited by them in excess to the apportionment of their liability, from the owner of the two



wheeler viz., the fifth respondent herein.

9. In the result, the Civil Miscellaneous Appeal is allowed in part to the extent indicated above. No costs. The connected Miscellaneous Petition is closed.

(C.V.K.,J.) (K.R.S.,J.)
22-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

ssk

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