



C.M.A.(MD)No.1214 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.06.2026

Pronounced on : 25.06.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.1214 of 2017

and

C.M.P.(MD)No.11948 of 2017

Branch Manager,
M/s.Iffco Tokyo General Insurance Co. Ltd.,
No.28, Old No.195, 1st & 2nd Floor,
North Usman Road, T.Nagar,
Chennai-600017.

... Appellant/
2nd Respondent

Vs.

1.Chelliah

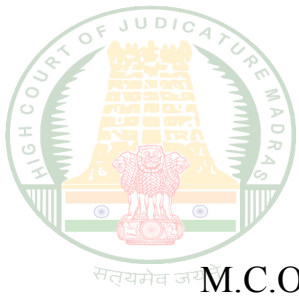
... 1st Respondent/
Petitioner

2.Chelladurai

... 2nd Respondent/
1st Respondent

*(2nd respondent ex parte in lower Court and hence
notice may be dispensed with)*

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988, against the judgment and decree in



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M.C.O.P.No.164 of 2008 dated 19.10.2009, on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Thirunelveli.

For Appellant : Mr.V.Sakthivel

For Respondents : No appearance for R1

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award made in M.C.O.P.No.164 of 2008 dated 19.10.2009 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Tirunelveli.

2. The appellant / insurer, who was mulcted with liability to pay compensation of Rs.67,500/- (Rupees Sixty Seven Thousand and Five Hundred only) with interest at 7.5% per annum and costs payable to the first respondent / claimant, for the disability sustained by him, consequent to an accident occurred on 10.01.2008, challenged the liability fastened on it and also the quantum of compensation awarded at, by the Tribunal.

3. When the matter was taken up on 15.06.2026, though the case was pending for taking steps for the deceased second respondent, the



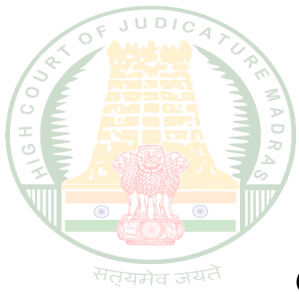
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learned counsel appearing for the appellant / insurer submitted that they are unable to find out the legal heirs of the deceased second respondent and that therefore, the appeal as against the second respondent may be dismissed. Moreover, despite receipt of notice, the first respondent / claimant failed to enter into appearance.

4. The learned counsel appearing for the appellant / insurer would mainly contend that they are disputing the liability and the invoking of principle of pay and recovery by the Tribunal and not the quantum of compensation awarded at, by the Tribunal.

5. The case of the first respondent / claimant is that on 10.01.2008, when the first respondent / claimant was travelling in a tractor-cum-trailer along with load, trailer got punctured and after removing the same, they were proceeding in the tractor and at the place near bridge situated on east of Kulasekaramangalam colony, the tractor driver drove the vehicle in a rash and negligent manner and as a result of which, the first respondent / claimant fell down and sustained injuries and that the accident was occurred only due to the rash and negligent driving of the tractor driver.



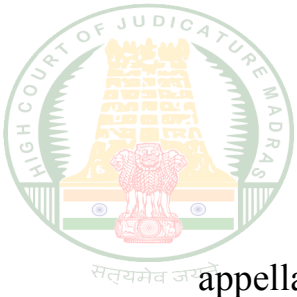
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6. The appellant / insurer, in the counter statement, has taken a defence that the second respondent's vehicle was not at all involved in the accident, but in the trial, they have taken a stand that the accident was occurred only due to the carelessness and negligence on the part of the driver and that the accident was not occurred as stated by the first respondent / claimant.

7. In order to prove the mode of accident, the first respondent / claimant examined himself as P.W.1 and deposed about the manner in which the tractor was driven and the result of the accident. Though the first respondent / claimant was subjected to cross-examination, his evidence with regard to the manner of accident remains unchallenged.

8. Moreover, it is pertinent to note that FIR was registered against the tractor driver and after completing the investigation, jurisdictional police laid the final report against the tractor driver. Moreover, in the criminal case in S.T.C.No.2039 of 2008 filed against the tractor driver before the Judicial Magistrate Court, Tenkasi, he pleaded guilty and on that basis, he was punished and fine was levied on him. Though the



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appellant / insurer has taken a stand that the tractor driver was not at fault and the first respondent / claimant alone was at fault, they have not chosen to examine the tractor driver or any other person allegedly witnessed the accident. The Tribunal, considering the evidence available on record, has rightly come to the conclusion that the accident occurred only due to the rash and negligent driving of the tractor driver.

9. The learned counsel appearing for the appellant / insurer would submit that the first respondent / claimant cannot travel in the tractor as the tractor is meant for agricultural purpose and since the owner by allowing the first respondent / claimant to travel in the tractor, violated the policy conditions and that therefore, the appellant / insurer is not liable for the claim.

10. Though the first respondent / claimant has alleged that due to puncturing of trailer, the same was delinked and he was forced to travel in the tractor, he has not chosen to produce any evidence to substantiate the said claim.



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11. Considering the above, the Tribunal has rightly held that the second respondent, by permitting the first respondent / claimant to travel in the tractor, has violated the conditions of the policy and taking note of the decision of this Court in ***National Insurance Co. Ltd., Vs. Ellappa and 19 others*** reported in ***2009 (1) TN MAC 648***, has applied the doctrine of pay and recovery and directed the appellant / insurer to pay the compensation and then to recover the same from the second respondent / owner of the vehicle and that the said finding cannot be faulted.

12. The Tribunal, taking note of the injuries sustained and the disability fixed at 40%, has awarded total compensation of Rs.67,500/-. As already pointed out, the appellant / insurer has not questioned the quantum of compensation.

13. Except the above, the appellant / insurer has not canvassed any other reason or ground to impugn the award. Consequently, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed.



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14. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant / insurer is directed to deposit the entire compensation amount as awarded by the Tribunal with interest and costs from the date of petition till the date of realization excluding the default period, if any, to the credit of M.C.O.P.No.164 of 2008 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Tirunelveli, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. Thereafter, the appellant / insurer is permitted to recover the same from the second respondent / first respondent as per law. On such deposit being made, the first respondent / claimant is are permitted to withdraw the amount together with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Consequently, connected miscellaneous petition is closed.

25.06.2026

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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K.MURALI SHANKAR,J.

esm

To:

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Tirunelveli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Judgment made in
C.M.A.(MD)No.1214 of 2017
and
C.M.P.(MD)No.11948 of 2017

Dated : 25.06.2026