BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 28.04.2026

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD).No.324 of 2026
and
C.M.P.(MD).No.2939 of 2026

The Divisional Manager
United India Insurance Company Limited
Dr.Sankaran Road, No.2, Puveshwari Complex,
Namakkal Taluk,
Namakkal District. ... Appellant

Vs.

1.Alphones

2.Amalorpavam

3.Beula

4.Velankani

5.Ganesh Babu

6.Muthusamy ... Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to call for the records pertaining to the Fair and Decreetal Order passed by the Motor Accident Claims Tribunal/Additional District and Sessions Judge, Periyakulam in M.C.O.P.No.99 of 2017 dated 28.02.2025, set aside the same by allowing the appeal.

For Appellants : Mr.P.Pethu Rajesh

For Respondents : Mr.S.Sarvagan Brabhu for R1 to R4

J U D G M E N T

(Judgment of the Court was delivered by **K.K.RAMAKRISHNAN.J,)**

The appellant–Insurance Company has preferred the present appeal challenging the award passed in M.C.O.P. No.99 of 2017, by judgment dated 28.02.2025, on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Judge, Periyakulam.

2.Facts of the case:

2.1. On 06.08.2017, at about 8.00 a.m., the deceased Arun Kumar was going from Thomaiyarpuram to Begampur, Dindigul, on a Hero Honda motorcycle bearing Registration No. TN 59 AL 6356, belonging to his friend, for buying chicken. After purchasing chicken, while he was returning from Begampur, Dindigul to Thomaiyarpuram, proceeding in a north-to-south direction and keeping to the left side of the Madurai Road, when he reached near Murugan Temple at Saveriyarpalayam at about 9.45 a.m., a private service bus bearing Registration No. TN 49 BA 8089 came from the opposite direction, i.e., south to north, driven by its driver, D. Ganesh Babu, in a rash and negligent manner, without honking the horn and without observing traffic rules, and dashed against the motorcycle ridden by the deceased Arun Kumar. Due to the forceful impact, the deceased was thrown off the motorcycle and his head was crushed under the wheel of the bus. Immediately, he was taken to the Government Hospital, Dindigul, where he was declared brought dead. Therefore, a case in Crime No.326 of 2017 was registered against the driver of the insured bus on the basis of the complaint lodged in connection with the occurrence.

2.2. Thereafter, the claimants filed a claim petition seeking compensation of Rs.27,00,000/-. The appellant insurance company filed a counter statement denying the manner of accident and disputing the negligence attributed to the driver of the insured bus. According to the insurance company, it is the deceased who rode the two-wheeler in a rash and negligent manner, without wearing a helmet, overtook other vehicles, crossed the white line and dashed against the insured bus, and thereby solely responsible for the accident. Hence, the insurance company sought exoneration from liability.

2.3. On the side of the claimants, P.W.1 to P.W.4 were examined and Exs.P1 to P12 were marked to prove the manner of accident and the quantum of compensation. On the side of the insurance company, R.W.1, the Inspector of

Police, was examined and Exs.R1 to R3 were marked.

3. **Finding of the Tribunal**

3.1. The learned Tribunal, on appreciation of the oral and documentary evidence, fixed the liability on the appellant-insured vehicle bearing Registration No.TN49 BA 8089 and awarded a sum of Rs.18,19,200/- together with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of realization under the following heads, by order dated 28.02.2025.

Sl. No.	Head of claim	Amount claimed (in Rupees)	Amount awarded (in Rupees)	Basic vital details in a nut shell
1.	Transportation to hospital	50,000	10,000	
2.	Loss of damage to clothing and other articles.	16,000	2,000	
3.	Funeral expenses.	30,000	15,000	
4.	Loss of love and affection.	4,00,000	2,00,000	
5	Loss of Income	22,23,504	15,37,200	(Rs.7,625 x 12 x 18 = Rs. 16,47,000 +40% = Rs. 23,05,800/3)
6.	Loss of estate.	--	15,000	
7.	Loss of consortium.	--	40,000	
	Total	**Rs.27,19,504 restricted to Rs. 27,00,000**	**Rs.18,19,200**	Rs.18,19,200/- with interest at 7.5% per annum from the date of petition till realization.

3.2.Challenging the said award, the appellant insurance company has preferred the present appeal mainly on the aspect of negligence.

4.Submissions of the learned counsel appearing for the appellant:

The learned counsel appearing for the insurance company would submit that the Tribunal failed to consider the evidence of RW1 and Exhibits R1 to R3 and erroneously came to the conclusion that the accident occurred only due to the rash and negligent driving of the appellant-insured bus driver. According to RW1, the Investigating Officer categorically reported that the accident had occurred only due to the negligence of the deceased. The learned Tribunal Judge ought to have discarded the evidence of PW2 and PW4; however, the same was not properly appreciated. Even assuming that the evidence of PW2 and PW4 is taken into consideration, the manner in which the accident occurred itself would indicate contributory negligence on the part of the deceased. The said aspect was also not properly considered by the learned Tribunal Judge. Hence, he seeks interference with the finding relating to negligence fixed upon the driver of the insured bus.

5.**Submissions of the learned counsel for the respondent:**

5.1. *Per contra*, the learned counsel appearing for the claimants would submit that the driver of the bus was not examined to rebut the evidence of PW2 and PW4. It is a well-settled principle that the evidence adduced before the Tribunal, along with the material documents produced, has to be independently appreciated for deciding the claim petition, irrespective of the result of the criminal proceedings or the closure of the criminal case as "mistake of fact." The learned Tribunal Judge rightly considered the said principle, appreciated the evidence of PW2 and PW4, and rendered a finding that the accident occurred only due to the rash and negligent driving of the appellant-insured bus driver.

5.2. Apart from that, the documents produced by the claimants clearly disprove the defence of the insurance company that the deceased rode the two-wheeler by crossing the middle white line on the Dindigul–Madurai Main Road near Sabari Colony towards Thomaiyarpuram. Ex.P12 does not show any middle white line on the said road at the time of the accident. Therefore, the defence projected by the insurance company stands contradicted by its own records. The learned Tribunal Judge rightly considered the same and consequently rejected the defence theory.

6. This Court carefully considered the rival submissions and perused the materials available on record.

7. This appeal has been filed only challenging the negligence. Therefore, the point for determination in this appeal is :-

(i) Whether the plea of the insurance company is that the deceased alone was responsible for the accident or was guilty of contributory negligence?

8.Discussion:

8.1. According to PW2 and PW4, who are the eyewitnesses to the occurrence, the deceased was riding his two-wheeler on the Dindigul Main Road, keeping to the left side of the road. At that time, the insured bus, which came in the opposite direction from south to north, dashed against the two-wheeler. In the impact, the bus wheel ran over the head of the deceased, resulting in his instantaneous death. Immediately thereafter, the eyewitnesses took the deceased to the hospital, where he was declared dead.

8.2. The evidence of PW2 and PW4 is cogent, trustworthy, and corroborative of each other. Their testimonies withstood the test of cross-examination conducted by the learned counsel for the insurance company. Except relying upon the closure report submitted by RW1, no independent evidence was adduced on the side of the insurance company to discredit or disprove the version spoken to by PW2 and PW4. The Gujarat High Court in

Rehna -vs- Ahmedabad Municipal Transport Service reported in ***AIR 1976 Gujarat 37*** reiterated principle that drivers of heavy vehicles on public roads bear a greater degree of care and responsibility, not only towards pedestrians and cyclists, but also towards other fast-moving vehicles using the road. Such vehicles are expected to be driven with due caution and under such control as would enable the driver to stop or manoeuvre within a fraction of a moment so as to avoid collision and the relevant paragraph as follows:

> " *16. In a long series of decisions this court has been rightly guided by the view that those who are moving with heavy and mechanically operated vehicles in road traffic bear a greater responsibi-lity not only towards the pedestarians and cyclists but also towards equally heavier and speedier vehicles and should, there-fore, drive their vehicles in such a man-ner that they can stop them and take them into control within a fraction of a moment to avoid a collision. The driver of such a vehicle should always be on a proper look out and watch the road be-haviour of all the pedestrians and vehicles moving on the road."*

The said principle has been consistently followed by several High Courts and has attained the status of a well-settled rule of road safety.

8.3. In the present case, the defence of the insurer is that the deceased rider, a young boy, drove the two-wheeler in the opposite direction and while overtaking another vehicle dashed against the insured vehicle. However, there is no acceptable evidence on record to substantiate the said plea. Significantly, the driver of the insured vehicle was not examined to speak about the manner of the accident or to establish the defence set up by the insurer as held by the Hon'ble Supreme Court in the following paragraph in the case of ***Anita Sharma v. New India Assurance Co. Ltd.,*** reported in **(2021) 1 SCC 171:**

> ***“23.*** *If the owner-cum-driver of the car was setting up a defence plea that the accident was a result of not his but the truck driver's carelessness or rashness, then the onus was on him to step into the witness box and explain as to how the accident had taken place.”*

Apart from the absence of evidence, it was the duty of the driver of the heavy vehicle, namely the appellant corporation bus, to take reasonable care by reducing speed and maintaining proper control on noticing the oncoming two-wheeler, so as to avert the accident. In such circumstances, this Court finds no reason to interfere with the finding of the learned Tribunal fixing negligence on the appellant corporation bus.

8.4. The mere fact that the criminal case was closed as “mistake of fact” cannot, by itself, be a ground to reject the otherwise reliable evidence adduced before the Claims Tribunal. The Hon’ble Supreme Court has consistently held that findings in criminal proceedings are not binding on the Claims Tribunal while adjudicating compensation claims under the Motor Vehicles Act. It is well settled that the Tribunal is duty-bound to independently determine negligence on the basis of the oral and documentary evidence produced before it, irrespective of the result of the criminal proceedings or the said witnesses are not examined by the investigating agency in the criminal case and in this aspect it is relevant to refer the following paragraph of the Hon'ble Supreme Court in the case of ***Anita Sharma v. New India Assurance Co. Ltd.***, reported in **(2021) 1 SCC 171 and *Sunita v. Rajasthan*** reported in ***SRTC*, (2020) 13 SCC 486:**

Anita Sharma v. New India Assurance Co. Ltd., (2021) 1 SCC 171	***Sunita v. Rajasthan SRTC, (2020) 13 SCC 486***

21. *Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyse the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true.*	***30.*** *Clearly, the evidence given by Bhagchand withstood the respondents' scrutiny and the respondents were unable to shake his evidence. In turn, the High Court has failed to take note of the absence of cross-examination of this witness by the respondents, leave alone the Tribunal's finding on the same, and instead, deliberated on the reliability of Bhagchand's (AD 2) evidence from the viewpoint of him not being named in the list of eyewitnesses in the criminal proceedings, without even mentioning as to why such absence from the list is fatal to the case of the appellants. This approach of the High Court is mystifying, especially in light of this Court's observation (as set out in Parmeshwari [Parmeshwari v. Amir Chand, (2011) 11 SCC 635 : (2011) 4 SCC (Civ) 828 : (2011) 3 SCC (Cri) 605] and reiterated in Mangla Ram [Mangla Ram v. Oriental Insurance Co. Ltd., (2018) 5 SCC 656 : (2018) 3 SCC (Civ) 335 : (2018) 2 SCC (Cri) 819]) that the strict principles of proof in a criminal case will not be applicable in a claim for compensation under the Act and further, that the standard to be followed in such claims is one of preponderance of probability rather than one of proof beyond reasonable doubt. There is nothing in the Act to preclude citing of a witness in motor accident claim who has not been named in the list of witnesses in the criminal case. What is essential is that the opposite party should get a fair opportunity to cross-examine the witness concerned. Once that is done, it will not be open to them to complain about any prejudice caused to them. If there was any doubt to be cast on the veracity of the witness, the same should have come out in cross-examination, for which opportunity was granted to the respondents by the Tribunal.*

8.5. In the present case, the Tribunal rightly relied upon the evidence of PW2 and PW4 and arrived at the conclusion that the accident occurred only due to the rash and negligent driving of the appellant-insured bus driver. This Court finds no reason to interfere with the said well-considered finding. Further, the specific defence of the insurance company is that the deceased crossed the middle white line while riding the two-wheeler. However, Ex.P12 does not show any such middle white line on the road at the time of the accident. Therefore, the very foundation of the defence raised by the insurance company stands falsified by the documentary evidence on record. Hence, the imaginary defence projected by the insurance company that the accident occurred due to the negligence of the deceased is liable to be rejected. In view of the above discussion, this Court finds no merit in the contention of the learned counsel for the insurance company that the deceased was responsible for the accident or that there was contributory negligence on his part.

9. **Conclusion**:

Accordingly, this Civil Miscellaneous Appeal is dismissed as devoid of merits. The compensation awarded in M.C.O.P.No.99 of 2017 on the file of the learned Motor Accident Claims Tribunal / Additional District and Sessions Judge, Periyakulam, dated 28.02.2025, is hereby confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petitions are closed.

[N.A.V.,J.] & [K.K.R.K.,J.]
06.04.2026

NCC :Yes/No
Index :Yes/No
Internet:Yes/No
sbn

To

1.The Motor Accidents Claims Tribunal cum III Additional Sub Court, Trichy.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

N.ANAND VENKATESH,J.
and
K.K.RAMAKRISHNAN,J.

sbn

C.M.A.(MD).No.324 of 2026

Dated: 06.04.2026