

C.M.A.(MD)No.193 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 18.08.2026

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MRS.JUSTICE M.D.SUMATHI

C.M.A.(MD)No.193 of 2022
and
C.M.P.(MD)Nos.1729 and 1731 of 2022

The Branch Manager,
Cholamandalam M.S. General Insurance Company Ltd.,
No. 42, Railway Police Line Street,
Arakkonam Head Office,
Arakkonam, Velur District. ... Appellant

Vs.

- 1.Nagapandi
- 2.Pounthai
- 3.The Branch Manager,
Chola Insurance Service Private Ltd.,
No. 34, Gandhi Road(4),
Spurvet, Arakkonam.
- 4.C.Murugesan
- 5.K.Shankar
- 6.The Branch Manager,
Oriental Insurance Company Ltd.,
V.V.G. Store Lane,
Theni Town,
Theni Taluk and District.



7.Senthil Vadivu

... Respondents

WEB COPY

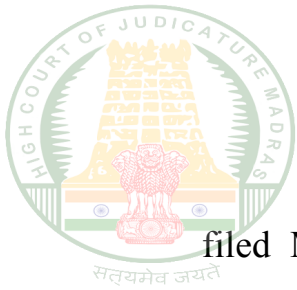
Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree made in M.C.O.P.No.114 of 2018, dated 03.02.2021 on the file of the Motor Accident Claims Tribunal/Additional District (FTC)(FAC), Theni.

For Appellant : Mr.K.R.Shivashankari

For Respondents : Mr.V.P.Rajan for R1 & R2
Mr.C.Jawahar Ravindran for R6
No appearance for R3 to R5

JUDGMENT
(By G.R.Swaminathan, J.)

The insurance company is the appellant before us. One Gopal was riding a two wheeler during the midnight on 10.05.2018 in Veerapandi-Vayalpatty road. The two wheeler met with a head-on collision with the van bearing registration number TN 01 AL 4356. The van was insured by the appellant company. Gopal died on the spot. Rajeshwari, the pillion rider also suffered injuries. In this connection, Crime No.201 of 2018 was registered on the file of Veerapandi Police Station for the offences under Sections 279, 337 and 304(A) IPC. The parents of the deceased

*C.M.A.(MD)No.193 of 2022*

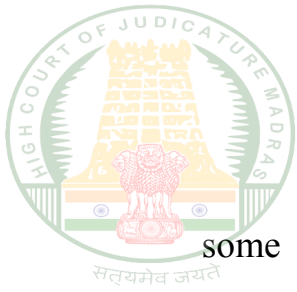
filed M.C.O.P.No.114 of 2018 claiming compensation to the tune of

Rs.30,00,000/-.

2.The insurance company filed counter opposing the claim. The first claimant examined himself as P.W.1. One Velmurugan, an eyewitness to the occurrence, was examined as P.W.2 and Exs.P1 to P16 were marked. On the side of the insurance company, an official from RTO Office was examined as R.W.1. The MV reports were marked as court documents. After considering the evidence on record, the Court below awarded compensation to the tune of Rs.25,54,000/- with interest vide award dated 03.02.2021. Questioning the same, this civil misappropriated appeal has been filed.

3.C.M.P.(MD)No.1731 of 2022 came to be filed along with this appeal under Order XLI Rule 27 of Civil Procedure Code for receiving the rough sketch as additional evidence.

4.The learned counsel appearing for the insurance company strongly contended that the deceased was equally at fault and therefore,



C.M.A.(MD)No.193 of 2022

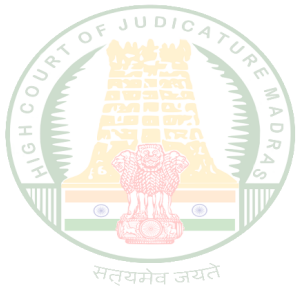
some deduction ought to have been made towards contributory negligence.

WEB COPY

5.Per contra, the learned counsel for the claimants contended that a reasonable award has been passed and that it does not call for interference. He pointed out that the insurance company failed to examine the driver of the offending vehicle. He added that the document now sought to be received as additional evidence was very much available when the trial took place and that therefore, the insurance company ought not to be allowed to fill up the lacuna. He pressed for dismissal of the appeal.

6.We carefully considered the rival contentions and went through the evidence on record. We will take up the application for reception of additional evidence for consideration. We will adopt the approach set out in *Wadi v. Amilal* ((2015) 1 SCC 677). The Hon'ble Supreme Court had held therein as follows:-

“4. On the question of admission of that document by the appellate court, it would be necessary to notice the relevant provision of Order 41 Rule 27 of the Code of Civil Procedure:



WEB COPY



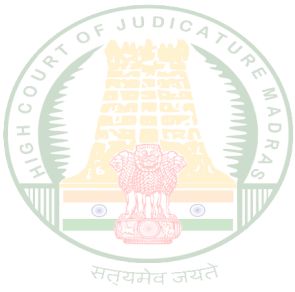
“27. Production of additional evidence in appellate court.

—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. But if—

*(a)-(aa) ****

(b) the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the appellate court may allow such evidence or document to be produced or witness to be examined.”

5. Now it is clear that Rule 27 deals with production of additional evidence in the appellate court. The general principle incorporated in sub-rule (1) is that the parties to an appeal are not entitled to produce additional evidence (oral or documentary) in the appellate court to cure a lacuna or fill up a gap in a case. The exceptions to that principle are enumerated thereunder in clauses (a), (aa) and (b). We are concerned here with clause (b) which is an enabling provision. It says that if the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, it may allow such document to be produced or witness to be examined. The requirement or need is that of the appellate court bearing in mind that the interest of justice is paramount. If it feels that pronouncing a judgment in the absence of such evidence would result in a defective decision and to pronounce an effective judgment admission of such evidence is necessary, clause (b) enables it to adopt that course. Invocation of clause

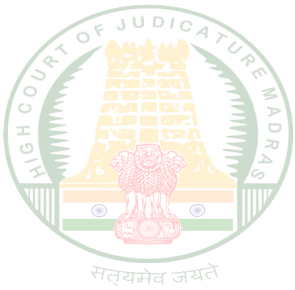


WEB COPY

C.M.A.(MD)No.193 of 2022

(b) does not depend upon the vigilance or negligence of the parties for it is not meant for them. It is for the appellant to resort to it when on a consideration of the material or record it feels that admission of additional evidence is necessary to pronounce a satisfactory judgment in the case.”

7.The rough sketch depicting the scene of accident is a relevant piece of evidence. It would definitely help the Court to arrive at the truth. The trial took place during 2020 when the Covid-19 pandemic was at its height. Probably that was why, the insurance company was not able to put its best foot forward. The final report in the criminal case was taken on file in C.C No.298 of 2018 on the file of Judicial Magistrate, Theni. We personally verified from the court website that this case is still pending. It is true that the appellant insurance company ought to have examined the driver of the vehicle insured by it. But we can understand as to why they could not do so. The driver is still facing prosecution. Obviously, he would not dare to enter the witness box. What is sought to be marked is only a certified copy of the rough sketch. It can be straight away received in the evidence as Ex.R1. It is not necessary to remit the matter for the purpose of marking this document alone. C.M.P.(MD)No.1731 of 2022 is allowed accordingly.

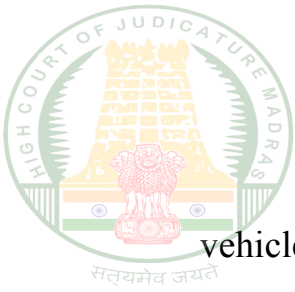


C.M.A.(MD)No.193 of 2022

WEB COPY

8.Our attention has been drawn to a recent decision of the Hon'ble Supreme Court reported in **2026 LiveLaw (SC) 433 (Parmila Vs.Rajender)**. The Hon'ble Supreme Court in the said decision had held that in cases involving head-on collision, the Court should not fasten the entire blame on one party without adequately examining the role and conduct of the other. It was also observed that the determination of negligence must be founded upon a balanced and objective assessment of the conduct of all parties involved, particularly where the circumstance suggests a possible sharing of responsibility. The complete exclusion of contributory negligence on the part of one driver, especially in a head-on collision, ordinarily warrants a careful scrutiny of the surrounding circumstances, including the manner of driving, the point of impact, and other attendant factors.

9.The following circumstances deserve to be taken note of. The occurrence had taken place a little past midnight. The deceased was a young man aged about 19 years. His girlfriend was sitting in the pillion. Any rider is bound to be exuberant when his girlfriend is sitting in the pillion. The two wheeler was going from West to East. The offending



C.M.A.(MD)No.193 of 2022

vehicle was coming from East to West. A mere look at the rough sketch/Ex.R1 would show that the accident was a head-on collision. The van was coming on the correct side. It was the two wheeler which was going on the wrong side (on the right side of the road). Being on the right can be a traffic-wrong. The father of deceased had fairly conceded that his son was not having any driving license. Though it was claimed that the deceased was having a learner's license, it was not marked. The stand of the insurance company was that the deceased did not have any driving license.

10.P.W.2 is no doubt an eyewitness to the occurrence. It was he who had summoned the ambulance. He had deposed that the offending vehicle was being driven in a rash and negligent manner. But this appears to be more like an *ipse dixit* of the said witness. The witness must be more forthcoming. He must tell the court what made him think that the offending vehicle was being driven in a rash and negligent manner. Mere description would not suffice. We had a look at the FIR. It had been tailor made to sustain the claim. Rajeswari was the defacto complainant and she has given not only the name of the offending driver



C.M.A.(MD)No.193 of 2022

but also his father's name. Obviously, Rajeswari could not have been aware of these details. We are of the view that the deceased also can be apportioned with contributory negligence. By his conduct, he had contributed to the occurrence. We quantify the contributory negligence of the deceased at 25%. The compensation shall stand reduced accordingly.

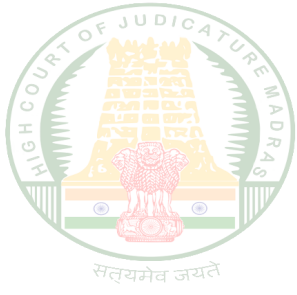
11.This civil miscellaneous appeal is partly allowed. No costs. Consequently, connected C.M.P.(MD)No.1729 of 2022 is closed.

(G.R.S. J.,) & (M.D.S. J.,)
18.08.2026

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias/skm

To:
The Motor Accident Claims Tribunal/
Additional District (FTC)(FAC),
Theni.

Copy to:
The Section Officer, ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.193 of 2022

G.R.SWAMINATHAN, J.
and
M.D.SUMATHI, J.

ias/skm

C.M.A.(MD)No.193 of 2022

18.08.2026