



WEB COPY



C.M.A.No. 372 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.06.2025
Pronounced on	30.06.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.372 of 2022 and

C.M.P. No.2583 of 2022

The Manager,
United India Insurance Company Limited,
No.73C, MTH Road, Ambattur,
Chennai 600 057

Now at,
Motor Third Party Claims Hub,
No.134, Silingi Buildings
4th Floor, Greams Road Chennai 6

...Appellant

Vs.

1. Rajini
2. M. Ajith Kumar
3. M. Naveen Kumar
4. M. Saravanan

...Respondents



C.M.A.No. 372 of 2022

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 11.12.2020 in M.C.O.P. No.118 of 2018 passed by the Special District Judge-1, Motor Accident Claims Tribunal, Tiruvallur .

Appearance

For Appellant : Mr.P. Sankaranarayanan
For Respondents : Mr. S.R. Karthikeyan for R1 to R3
R4 No appearance.

JUDGMENT

By the impugned Award dated 11.12.2020 passed in M.C.O.P. No.118/2018, the learned Special District Judge-1, Motor Accident Claims Tribunal, Tiruvallur, has awarded, in favour of the claimants/respondents 1 to 3, a sum of Rs.20,06,000/- together with interest at the rate of 7.5% per annum from the date of presentation of the petition i.e. 19.12.2018 till the date of realisation with costs. Challenging the same the present appeal is filed by the Insurance Company.



C.M.A.No. 372 of 2022

WEB COPY

2. For the sake of convenience, the parties are referred to as per their ranking in the Tribunal.

3. The claimants' case, in brief, was that on 20.10.2017, at about 16.30 hours, the deceased pedestrian, was crossing a road near Magna Engineering College, Magaral Kandigai Village at Tiruvallur to Redhills Road, and at that time, a lorry bearing Registration No.TN 09 CB 9382, came in the opposite direction, driven by its driver in a rash and negligent manner, dashed against the deceased and caused the accident, as a result of which, the deceased died on the spot.

3.1. According to the claimants, who are the wife and sons respectively of the deceased, the alleged accident took place only due to the rash and negligent driving of the driver of the lorry bearing Registration No.TN 09 CB 9382 and that since the said vehicle was insured with the appellant/second respondent, the United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation



C.M.A.No. 372 of 2022

WEB COPY

to them. Further it is stated in the Claim Petition that at the time of the accident the deceased was aged about 40 years and he was a gold smith earning a sum of Rs.1,000/- per day.

4. The Tribunal after analysing the evidence on record and since no documentary evidence has been brought on record for proving the income of the deceased, fixed the notional monthly income of the deceased as Rs.15,349/- based on the inflation index and, considering the age of the deceased, added 25% for future prospects and adopted multiplier of 14 and calculated the loss of earning capacity at Rs.21,48,888/-. Since there are three dependants, the Tribunal deducted 1/3 towards his personal expenses and awarded the above amount. To this amount, the Tribunal added Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium, Rs.15,000/- towards Funeral Expenses and Rs.10,000/- towards transport expenses. Thus the Tribunal has awarded, in all, a sum of Rs.22,28,888/- and deducted 10% towards contributory negligence.



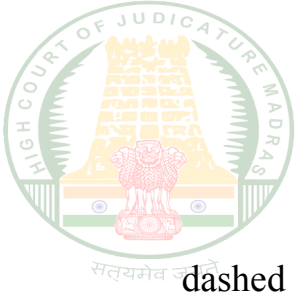
C.M.A.No. 372 of 2022

WEB COPY

5. Challenging the amount deducted towards contributory negligence is inadequate, the appellant/Insurance Company has preferred this Appeal.

6. Mr.P. Sankaranarayanan, learned counsel for the appellant submits that FIR (Ex.P1) lodged by the son of the deceased reveals that the deceased was in a mentally disturbed state of mind before the accident and had suddenly crossed the centre median and invited the accident. His further contention is that the eye witness examined as P.W.2 categorically admitted during the course of cross examination that the deceased jumped over the centre median and walked into the pathway of the lorry and met with an accident. While so, the Tribunal had erred in fixing only 10% towards contributory negligence, which is inadequate and requires interference by this Court.

7. On the other hand, Mr. S.R. Karthikeyan, learned counsel appearing for the claimants/respondents 1 to 3 submits that the driver of the offending vehicle drove the vehicle in a rash and negligent manner and



C.M.A.No. 372 of 2022

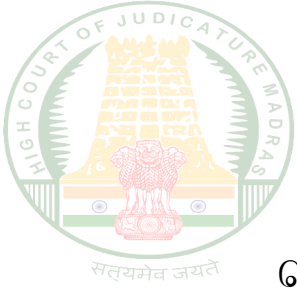
WEB COPY

dashed against the deceased. Hence, the driver of the lorry alone was responsible for the accident and there is no negligence on the part of the deceased .

8. In the light of the above factual position, the only point for consideration is that whether the driver of the offending vehicle was solely negligent or there was a contributory negligence on the part of the deceased and if so, what would be its extent?

9. The Tribunal has considered the FIR (Ex.P1) and the evidence of P.W.2, the eye witness to the accident. On a careful perusal of Ex.P1/FIR, the contents reveal that

"XXXXX என்னுடைய அப்பா மகேந்திரன் நகை ஆச்சாரி வேலை செய்து வருகிறார். சில காலமாக மன உளைச்சலால் காணப்பட்டார். நேற்று காலை வேலைக்கு செல்வதாக சொல்லிவிட்டு சென்றவர் நேற்று 20.10.2017-ந் தேதி மாலை 4.30 மணியளவில் மாகரல் மேக்னா கல்லூரி அருகில் TN-09-CB-9382 எண்ணுள்ள லாரி



C.M.A.No. 372 of 2022

WEB COPY

செங்குன்றத்திலிருந்து தாமரைப்பாக்கம் நோக்கி வரும்போது லாரியின் குறுக்கே சென்றுள்ளார். அப்போது லாரி அவர் மீது மோதியதால் என் அப்பா சம்பவ இடத்திலேயே இறந்துவிட்டார் xxxxx "

Further more P.W.2 had deposed as follows:

"xxxxx இறந்து போன நபர் மாகரல் கண்டிகை பேருந்து நிறுத்தம் அருகில் மேக்னா பொறியியல் கல்லூரி அருகில் ரெட்-ஹில்ஸ் செல்லும் சாலையிலிருந்து இடதுபுறத்திலிருந்து வலதுபுறம் செல்வதற்காக சாலை நடுவில் உள்ள தடுப்பு (Center Median) சுவரை தாண்டி இறங்கும் போது ரோட்டின் மையப்பகுதியில் திருவள்ளூர் நோக்கி வந்த டிம்பர் லாரி பதிவு எண். TN-09-CB-9382 வேகமாக வந்து அந்த நபரை இடித்துவிட்டது xxxxx"

"xxxxx இறந்தவர் சென்டர் மீடியன் ஏறி கிராஸ் செய்ய போனார். அந்த இடத்தில் ரோட்டை கிராஸ் செய்ய போடும் நடைபாதை வெள்ளை கோடு இல்லை. xxxxx".

The Tribunal has also considered Ex.P6/rough sketch and concluded that the



C.M.A.No. 372 of 2022

WEB COPY

deceased at the time of the accident crossed the centre median and while attempting to cross the road, the offending lorry dashed against him and therefore, fixed 10% contributory negligence on the part of the deceased. The Tribunal considered that the evidence of P.W.2 as worthy credence as eye witness and also Ex.P1/FIR and Ex.P6/rough sketch.

10. The evidence on record, as found by the Tribunal, establishes that there was negligence on the part of the driver of the vehicle and it cannot be disputed. The only dispute is whether there was contributory negligence on the part of the deceased. The evidence on record, as found by the Tribunal, establishes that there was negligence on the part of the driver of the vehicle and it cannot be disputed. The only dispute is whether there was contributory negligence on the part of the deceased. The evidence on record shows that, at the time of accident, the deceased crossed the centre median and while crossing the road, he met with an accident. No. doubt, had the driver of the offending vehicle driven the vehicle at reasonable speed, he could have avoided the accident by applying brakes. But, now a days, the pedestrians take the risk of crossing the roads though it is strictly prohibited.



C.M.A.No. 372 of 2022

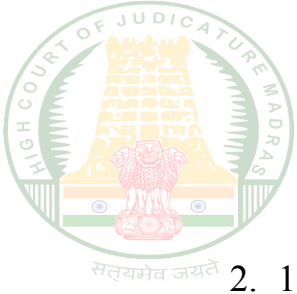
WEB COPY

In spite of precautions, people like the deceased make attempts to cross the road, wherever it is possible. In the present case, if the deceased had not crossed the centre median for crossing the road, he would not have met with an accident. Therefore, the Tribunal has rightly come to the conclusion that there is contributory negligence on the part of the deceased pedestrian. However, only 10% has been fixed as contributory negligence on the part of the deceased, which, according to this Court, can be increased to 20%. Accordingly, taking into consideration 20% contributory negligence on the part of the deceased, the total compensation works out to Rs.17,83,110/- (Rs.22,28,888/- (total Award amount) - Rs.4,45,778/- (20% contributory negligence). The claimants are entitled to Rs.17,83,110/- (Rupees seventeen lakhs eighty three thousand one hundred and ten only), which is fair and reasonable.

11. In the result,

1. The appeal filed by the appellant/Insurance Company is partly allowed.

No costs. Consequently connected miscellaneous petition is closed.



C.M.A.No. 372 of 2022

WEB COPY

2. 10% contributory negligence fastened on the part of the deceased by the Tribunal is increased to 20%.
3. The Appellant Insurance Company is directed to deposit a sum of Rs.17,83,110/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.118 of 2018 on the file of the Special District Judge-1, Motor Accident Claims Tribunal, Tiruvallur, within a period of six weeks from the date of receipt of a copy of this judgment.
4. On such deposit being made, the claimants/respondents 1 to 3 are at liberty to withdraw the same as per the apportionment made by the Tribunal after filing a proper petition for withdrawal.

30.06.2025

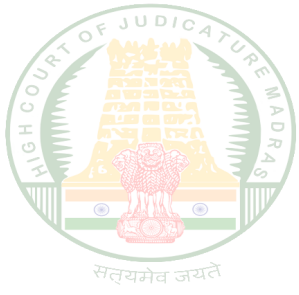
bga

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

10/12

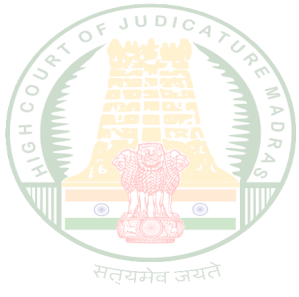


C.M.A.No. 372 of 2022

WEB COPY

To,

1. The Special District Judge-1, Motor Accident Claims Tribunal, Tiruvallur
2. The Section Officer, VR Section, Madras High Court, Chennai.



WEB COPY



C.M.A.No. 372 of 2022

K.GOVINDARAJAN THILAKAVADI, J.

bga

Pre-delivery Judgment made in

C.M.A.No.372 of 2022 and

C.M.P. No.2583 of 2022

30.06.2025