



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 03.09.2021

Delivered On : 06.10.2021

CORAM

**THE HONOURABLE MRS.JUSTICE R. THARANI**

C.M.A.(MD)No.992 of 2018

and

C.M.P.(MD)Nos.10363 of 2018 and 2285 of 2021

WEB COPY

National Insurance Company,  
Through its Branch Manager,  
333 1, Sekkalai Road,  
Karaikudi Town,  
Karaikudi Taluk,  
Sivagangai District.

... Appellant/Respondent No.2

**Vs.**

1.A.Gandhimathi  
2.Arumugam  
3.Balu

... Respondent No.1/Petitioner No.1  
... Respondent No.2/Petitioner No.2  
... Respondent No.3/Respondent No.1

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Sub Court, Devakottai, in M.C.O.P.No.92 of 2013 dated 20.02.2017.

For Appellant : Mr.D.Sivaraman

For Respondents 1&2 : Mr.J.Anand Kumar

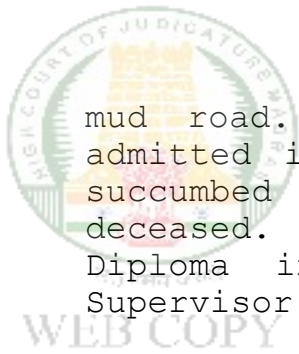
### **JUDGMENT**

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.92 of 2013 dated 20.02.2017, on the file of the Motor Accident Claims Tribunal (Sub Judge), Devakottai.

2.The appellant herein is the second respondent and the respondents 1 and 2 herein are the claimants and the third respondent herein is the first respondent in the claim petition. The respondents 1 and 2 herein have filed a claim petition in M.C.O.P.No.92 of 2013, claiming compensation for the death of Kannan, in an accident that took place on 29.05.2013. The Tribunal has awarded a sum of Rs.14,16,000/- (Rupees Fourteen Lakhs and Sixteen Thousand only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.92 of 2013 is as follows:

On 29.05.2013, at about 02.00 a.m., one Manickam was riding a hero honda motorcycle bearing registration No.TN65-Q-5542 that belongs to the first respondent. The deceased and one Rajkumar travelled in the bike as pillion riders. Manickam drove the bike in a rash and negligent manner and the bike skid the ground near the



mud road. All three persons sustained injuries and they were admitted in the Government hospital, Dindigul. The deceased died succumbed to the injuries. The claimants are dependants of the deceased. The deceased was aged about 21 years and he completed Diploma in Civil Engineering. He was working as a Building Supervisor and was earning Rs.9,000/- per month.

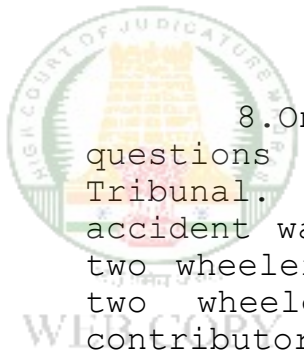
4.A brief substance of the counter filed by the second respondent therein is as follows:

The deceased travelled as triples in the bike and has violated the policy conditions. The rider of the vehicle does not have any valid driving licence. The deceased was only a student. The age, income and profession of the deceased are all denied. The claim is excessive.

5.Two witnesses were examined and 9 documents were marked, on the side of the petitioners. No witness was examined and no document was marked, on the side of the respondents. After trial, the Tribunal has awarded a sum of Rs.14,16,000/- (Rupees Fourteen Lakhs and Sixteen Thousand only) as compensation to be paid by the appellant. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellant, it is stated that the rider of the two wheeler was not having valid driving licence. The Tribunal has failed to note that the deceased travelled in a two wheeler along with one another pillion rider, which is violation of policy conditions. The Tribunal awarded compensation based on a decision made in a case in **Managing Director v. Muppudathi** reported in **2016 (1) tnmac 74**. The liability was fixed on the driver of the bus in **Muppudathi** case which is not applicable to the present case. The facts of the cited case is different from the facts of the present case. Only because three persons travelled in a two wheeler in a cramped manner, the rider could not control the vehicle, due to which the vehicle capsized. Instead of deducting 50% towards own expenses, the Tribunal has deducted 1/3<sup>rd</sup> which is erroneous. The multiplier is only '14' and not '18'. The award is excessive.

7.On the side of the appellant, it is stated that no other vehicle was involved in the accident. Three persons riding in a two wheeler as triples are liable for contributory negligence. Only due to the travelling of three passengers in a two wheeler, the rider lost control and hence, atleast 50% contributory negligence is to be fixed on the deceased. In support of this contention, a judgment of this Court in the case of **United India Insurance Co. Ltd., v. Muniyappan and another** in **C.M.A.No.358 of 2016** is cited, wherein 15% liability is fixed on the persons who travelled as one of the four passengers in the two wheeler.



8. On the side of the respondents, it is stated that the questions of contributory negligence was not raised before the Tribunal. The appellant has not raised an allegation that the accident was only due to the travelling of three passengers in the two wheeler. There is no specific pleadings. Three persons in the two wheeler is only a violation of policy conditions. No contributory negligence can be fixed. Court can order the appellant to pay the compensation and to permit the appellant to recover the same from the owner of the vehicle. In support of this contention, a judgment of this Court in the case of **Cholamandalam v. Ramesh Babu** reported in **2020 (2) TNMAC 153** is cited.

9. It is seen that the deceased travelled in the two wheeler along with two other persons. Hence, the deceased is liable for contributory negligence. The contributory negligence is fixed at 20%.

10. On the side of the appellant, it is stated that the averment that the deceased was working as a Building Supervisor and was earning Rs.9,000/- (Rupees Nine Thousand only) per month is not reliable. When there is no proof of avocation or income, the Tribunal has to fix the monthly income only as Rs.6,500/- (Rupees Six Thousand and Five Hundred only). The learned counsel for the appellant would rely upon the judgment of the Hon'ble Supreme Court in the case of **Syed Sadiq v. United India Insurance Co. Ltd.**, reported in **2014 (2) SCC 735**, wherein monthly income was fixed as Rs.6,500/- (Rupees Six Thousand and Five Hundred only).

11. On the side of the respondents, it is stated that the income was proved through Ex.P7, salary certificate and Ex.P5 to Ex.P8 are the educational certificates of the deceased. On the side of the respondents, it is stated that the future prospects is to be taken into consideration for fixing the loss of income.

12. Considering the above submission, the income is fixed as Rs.7,500/-. After deducting 50% towards his own expenses, the monthly income is fixed as Rs.3,750/- per month. The age of the deceased at the time of accident is 21 years and multiplier '17' is applicable. After adding 50% towards future prospects (Rs.5,625/-) and by applying multiplier method, the claimants are entitled to a sum of Rs.11,47,500/- (Rupees Eleven Lakhs Forty Seven Thousand and Five Hundred only) towards loss of income. As per the **Praney Sethi** case, it is decided that a sum of Rs.70,000/- is to be awarded towards conventional charges. The total compensation awarded is Rs.12,17,500/- (Rupees Twelve Lakhs Seventeen Thousand and Five Hundred only).

13. Since the deceased is liable for contributory negligence, 20% has to be deducted from the compensation awarded. Hence, the respondents 1 and 2 are entitled to a sum of Rs.9,74,000/- (Rupees



Nine lakhs and Seventy Four Thousand only) as compensation.

14. In the result, this Civil Miscellenaous Appeal is **partly allowed**. The respondents 1 and 2 herein are entitled to a sum of Rs.9,74,000/- (Rupees Nine lakhs and Seventy Four Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

15. The appellant is directed to deposit Rs.9,74,000/- (Rupees Nine lakhs and Seventy Four Thousand only) with 7.5% interest from date of the claim petition till the date of realization with cost and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimants are permitted to withdraw their respective shares as per the ratio of apportionment by the Tribunal with proportionate interest after deducting any amount received by them earlier. Excess amount, if any deposited shall be refunded to the appellant. The claimants are not entitled for interest for the default period, if there is any. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

Note: In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

**To**

1. The Motor Accidents Claims Tribunal,  
Sub Judge,  
Devakottai.

2. The Section Officer,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 Copies)

+1 CC to M/s.D.SIVARAMAN, Advocate ( SR-31371[F] dated 06/10/2021 )

**C.M.A. (MD)No.992 of 2018**

**06.10.2021**

**ARK (CO)**

**RS (28.10.2021) 4P 5C**

<https://hcservices.ecourts.gov.in/hcservices/>