IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE S.SOUNTHAR**

C.M.A.No.2428 of 2021
and C.M.P.No.13882 of 2021

United India Insurance Company Limited
Represented by its
Branch Manager
SSG complex, First floor
No.25B, Kutchery Road
Sirkali Town and Taluk ... Appellant

Vs.

1.K.Malathi

2.K.Ragu

3.K.Ranjith

4.K.Thirunavukkarasu

5.R.Jegatham

6.Kaveri ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.02.2021 made in M.C.O.P.No.207 of 2018 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Mayiladuthurai.

For Appellant	:	Mr.D.Bhaskaran
For RR1 to 5	:	Mr.T.Gobinath
For R6	:	No appearance

JUDGMENT

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the judgment and decree dated 23.02.2021 made in M.C.O.P.No.207 of 2018 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Mayiladuthurai.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.207 of 2018 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Mayiladuthurai. The respondents 1 to 5 filed the said claim petition claiming a sum of Rs.75,00,000/- as compensation for the death of one Kadhiravan, who died in the accident that took place on 08.09.2018.

3.According to the respondents 1 to 5, on the date of accident i.e., on 08.09.2018 at about 11.30 A.M., while the deceased Kadhiravan was riding in his two wheeler bearing Registration No.TN-82C-0838, from Needur to Anandakudi Road, near Manalur Mandikalam, from East to West direction, the driver of the Tractor bearing Registration No.TN-51T-6482, who was coming behind the two wheeler, drove the same in a rash and negligent manner, hit the two wheeler driven by the deceased Kadhiravan and caused the accident. In the accident, the deceased Kadhiravan died on the spot. Therefore, the respondents 1 to 5 have filed the above claim petition claiming compensation for the death of said Kadhiravan against the 6th respondent, owner of the tractor and appellant/Insurance Company, insurer of the said tractor.

4.The 6th respondent, owner of the tractor remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the place of occurrence is a narrow rural road. While the driver of the tractor was driving the same in a slow speed and turned on a sweep curve after giving due horn sound, the deceased Kadhiravan alone overtook another vehicle in a narrow rural road and invited the accident. The accident has occurred only due to the negligence of the deceased Kadhiravan. At the time of accident, the deceased did not wear helmet and not possessed valid driving license to ride the vehicle. The pillion rider of the two wheeler, who sustained injuries in the accident, filed another claim petition stating that while they were travelling on the left side of the road, the driver of the offending vehicle dashed against the rear side of the two wheeler and due to the said impact, they fell down and sustained injuries. There were two different versions for the same accident and therefore, the claim petition is to be dismissed. In any event, the compensation claimed by the respondents 1 to 5 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent, wife of the deceased examined herself as P.W.1, one Senthilkumar, pillion rider of the two wheeler, who is eye-witness to the accident, was examined as P.W.2 and one

Kamalamurugan, was examined as P.W.3 and 10 documents were marked as Exs.P1 to P10. The appellant/Insurance Company examined two witnesses as R.W.1 and R.W.2 and marked one document as Ex.R1. The witness documents were marked as Exs.W1 and W2.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the tractor belonging to the 6th respondent, fixed 90% negligence on the part of the driver of the tractor, fixed 10% negligence on the part of the deceased Kadhiravan, as he did not possess driving license at the time of accident, awarded a sum of Rs.64,67,091/- as compensation to the respondents 1 to 5 and directed the appellant/Insurance Company being the insurer of the said tractor to pay a sum of Rs.58,20,382/- being 90% of the compensation to the respondents 1 to 5.

8.Against the said award dated 23.02.2021 made in M.C.O.P.No.207 of 2018, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that even in the F.I.R., it has been stated that when the deceased was trying to overtake the vehicle, the accident has occurred. The deceased, who was riding the motorcycle, behind the tractor going in front of him, did not leave sufficient space in order to avoid the accident, if the vehicle going in front suddenly stops or turns to right hand side. The deceased tried to overtake without getting any signal from the other side vehicle and invited the accident. The deceased rode the two wheeler carelessly and was responsible for the accident. The Tribunal considering F.I.R. and Motor Vehicle Inspector's report ought to have rejected the evidence of P.W.2 and fixed entire negligence on the deceased. The learned counsel further contended that as per the death certificate and salary certificate, the deceased had completed 50 years at the time of accident and he had only seven years of service left. The Tribunal erroneously fixed age of the deceased at 47 years, granted 30% enhancement towards future prospects and erred in applying multiplier '13' instead of applying split multiplier. The Tribunal without any adjudication about salary and variables, erroneously accepted the salary certificate without any deduction. The Tribunal ought to have deducted 50%

towards personal expenses taking into consideration the evidence of P.W.1 that there is only one claimant, since the respondents 2 and 3 are married sons and are living separately. The Tribunal while computing the amount towards loss of dependency, failed to deduct income tax and professional tax payable by the deceased and prayed for setting aside the award of the Tribunal.

10.The learned counsel appearing for the respondents 1 to 5 contended that the driver of the tractor drove the same in a rash and negligent manner, suddenly turned the tractor to the right hand side and caused the accident. F.I.R. is registered only against the driver of the tractor. P.W.2, who was pillion rider in the two wheeler driven by the deceased at the time of accident, an eye-witness to the accident, has categorically stated that the accident occurred only due to rash and negligent driving by the driver of the tractor. There is no contra evidence let in by the appellant to the evidence of P.W.2. The appellant cannot rely on the F.I.R. to fix negligence. The learned counsel appearing for the respondents 1 to 5 further contended that the deceased was working as Lab Assistant in A.V.C. College, Mannampandhal, Mayiladuthuri and was earning a sum of Rs.45,000/- per month and the respondents 1 to 5 proved the avocation and income by marking the salary certificates as Exs.P9 and P10. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

11.Though notice has been served on the 6th respondent and her name is printed in the cause list, there is no representation for her either in person or through counsel.

12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 5 and perused the entire materials on record.

13.From the materials on record, it is seen that it is the case of the respondents 1 to 5 that while the deceased was riding two wheeler along with P.W.2 as pillion rider, the driver of the tractor, who was going in front of two wheeler, suddenly turned to the right hand side and caused the accident. To substantiate their contention, they examined the pillion rider as P.W.2 and marked F.I.R., which was registered against the driver of the tractor, as Ex.P1.

On the other hand, it is the case of the appellant that accident has occurred while the deceased was overtaking the tractor, without getting any signal from the driver of the tractor and invited the accident. The appellant in support of their contention, also relied on the contents in the F.I.R. A reading of F.I.R. does not reveal that while the deceased was trying to overtake the tractor, the accident has occurred. The evidence of P.W.2 also reveals that when the deceased came to right hand side, the driver of the tractor suddenly turned to the right hand side and thus, the accident has occurred. The appellant did not examine the driver of the tractor or any eye-witness to disprove the evidence of P.W.2 and to prove their case that the accident occurred only due to negligence of the deceased, while he was overtaking the tractor. The Tribunal considering the above materials, rightly held that the accident has occurred due to negligence of the driver of the tractor and fixed 90% negligence on the part of the driver of the tractor and 10% negligence on the part of the deceased Kadhiravan, as he did not possess driving license at the time of accident. There is no error in the said finding of the Tribunal warranting interference by this Court.

14.As far as quantum of compensation is concerned, it is the case of the respondents 1 to 5 that the deceased was aged 47 years at the time of accident, he was working as Lab Assistant in A.V.C. College, Mannampandhal, Myladuthurai and was earning a sum of Rs.45,000/- per month. To substantiate their case, they marked the salary certificates of the deceased as Exs.P9 and P10. In the salary certificate, the date of birth of the deceased is mentioned as 16.04.1968. The date of accident is 08.09.2018. On the date of accident, the deceased had completed 50 years and four months. In the death certificate also, age of the deceased was mentioned as 50 years. Only in Ex.P2/Post-mortem certificate, age of the deceased was mentioned as 47 years. Only in the absence of any document with regard to age of the deceased, the Tribunal can take into consideration the post-mortem certificate to fix the age. In the present case, the respondents 1 to 5 have filed Exs.P9 and P10 salary certificates, in which date of birth of the deceased has been mentioned as 16.04.1968. In view of the same, age fixed by the Tribunal is not correct. The correct age of the deceased is 50 years. In view of the same, the respondents 1 to 5 are entitled to only 15% enhancement towards future prospects as per the judgment of the Hon'ble Apex Court reported in **2017 (2)**

TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]. The Tribunal, following the judgment of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC (Sarla Verma and others vs. Delhi Transport Corporation and another),** applied multiplier '13'. As far as contention of the learned counsel appearing for the appellant that the Tribunal ought to have applied split multiplier is concerned, the deceased was working as Lab Assistant in A.V.C. College at the time of accident and after retirement, he would have got employment either in a private college or any private lab and can earn some amount as income. In view of the same, the multiplier '13' applied by the Tribunal is correct.

14(i). The contention of the learned counsel appearing for the appellant that respondents 2 and 3 are married sons and are not entitled for any compensation, is not acceptable. The deceased would have contributed his income to his children and they lost their father and hence, they are entitled to get compensation.

14(ii). The Tribunal failed to deduct any amount towards income tax. The Tribunal considering Ex.P10/salary certificate, fixed a sum of Rs.40,941/- as monthly income of the deceased. The accident has occurred on

08.09.2018. During the financial year 2018-2019, upto Rs.2,50,000/-, there is nil tax. Thus, the calculation for arriving annual income is as follows :-

Monthly salary of the deceased	...	Rs.40,941.00
15% enhancement towards future prospects	...	Rs.6,141.15

		Rs.47,082.15

Annual income (47,082.15 x 12)	...	Rs.5,64,985.80 rounded off to Rs.5,64,986/-

Income Tax Slab for financial year 2018-2019

Upto Rs.2,50,000/-	-	Nil
From Rs.2,50,001/- to Rs.5,00,000/- (5%) [Rs.2,50,000/- X 5%]	-	Rs.12,500.00
Above Rs.5,00,000/- - (20%) [Rs.64,986/- X 20%]	-	Rs.12,997.20

		Rs.25,497.20

Annual income after deducting income tax (Rs.5,64,986/- – Rs.25,497.20)	-	Rs.5,39,488.80 rounded off to Rs.5,39,489/-

Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.52,60,018/- (Rs.5,39,489/- X 13 X 3/4). The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	62,27,091	52,60,018	Reduced
2.	Loss of consortium to the 1st respondent	40,000	40,000	Confirmed
3.	Loss of love and affection to the respondents 2 to 5 Rs.40,000/- each	1,60,000	1,60,000	Confirmed
4.	Funeral expenses	15,000	15,000	Confirmed
5.	Transportation	10,000	10,000	Confirmed
6.	Loss of estate	15,000	15,000	Confirmed
	Total	**64,67,091**	**55,00,018**	**Reduced by Rs.8,70,366/-**
	90% of the award amount	**58,20,382**	**49,50,016.20 rounded off to 49,50,016**	

15.With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.58,20,382/- awarded by the Tribunal is hereby reduced to Rs.49,50,016/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 5 are permitted to withdraw their respective share of the award amount, now determined by this Court, as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.207 of 2018 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Mayiladuthurai. if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) **(S.S., J)**
15.06.2022

Index : Yes / No
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To

1.The Principal District Judge

Motor Accident Claims Tribunal
Mayiladuthurai.

2.The Section Officer
VR Section
High Court
Madras.

V.M.VELUMANI,J.
and
S.SOUNTHAR,J.

kj

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and C.M.P.No.13882 of 2021

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