# IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Dated : 01.08.2023**

**Coram**

**The Honourable Mr.Justice SUNDER MOHAN**

**C.M.A.Nos.1128, 1461 & 1622 of 2022**
**and C.M.P.Nos.8288, 13525, 10799 & 12056 of 2022**

**C.M.A.No.1128 of 2022:**
The Branch Manager,
M/s.Reliance General Insurance Co. Ltd.,
Puducherry.

...Appellant

Versus

1.Govindan
2.Santhi
3.Poongothai
4.Thamizhselvi
5.Mr.Siva Mahesh

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 29.11.2021 passed in M.C.O.P.No.575 of 2018 by the Motor Accident Claims Tribunal, IInd Additional District Court, Puducherry.

| | | |
|---|---|---|
| For Appellant | : | Mrs.C.Bhuvanasundari |
| For Respondents – 1 to 4 | : | Mr.R.Sreedhar |
| For Respondent – 5 | : | No Appearance |

**C.M.A.No.1461 of 2022:**

The Branch Manager,
M/s.Reliance General Insurance Co. Ltd.,
Puducherry. ...Appellant

Versus

1.Mrs.Jahuran Bibi
2.Minor Raju Khan
Rep. by his mother Mrs.Jahuran Bibi
3.Mr.Siva Mahesh ...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 29.11.2021 passed in M.C.O.P.No.1004 of 2018 by the Motor Accident Claims Tribunal, IInd Additional District Court, Puducherry.

| | | |
|---|---|---|
| For Appellant | : | Mrs.C.Bhuvanasundari |
| For Respondents – 1 & 2 | : | Mr.V.Iyyappan |
| For Respondent – 3 | : | No Appearance |

**C.M.A.No.1622 of 2022:**

The Branch Manager,
M/s.Reliance General Insurance Co. Ltd.,
Puducherry. ...Appellant

Versus

1.Mr.Safir Khan
2.Mrs.Ashama Bibi
3.Ms.Asmina Bibi

4.Mr.Saifudin Khan
5.Mr.Siva Mahesh ...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 29.11.2021 passed in M.C.O.P.No.1002 of 2018 by the Motor Accident Claims Tribunal, IInd Additional District Court, Puducherry.

| | | |
|---|---|---|
| For Appellant | : | Mrs.C.Bhuvanasundari |
| For Respondents – 1 to 4 | : | Mr.V.Iyyappan |
| For Respondent – 5 | : | No Appearance |

## COMMON JUDGMENT

All these appeals arise out of a same accident and hence, the same are disposed of by this common judgment.

2. These Civil Miscellaneous Appeals have been preferred by the appellant/Insurance Company seeking to set aside the judgment and decree dated 29.11.2021 passed by the learned II Additional District Judge, Motor Accident Claims Tribunal, Puducherry in M.C.O.P.Nos.575, 1004 & 1002 of 2018 respectively.

3. The brief facts leading to the filing of these appeals are as follows:

On 13.05.2018, at about 2.45 a.m., while one Manikandan was riding a Suzuki motorcycle bearing Registration No.PY 05 W 3960 along with two pillion riders viz., Ramjan Ali & Azaruddin Khan on Pondy – Villupuram Main Road, near Appasamy Company, Vadamangalam, Puducherry from west to east direction, a TATA Multi Axle Goods vehicle bearing Registration No.TN 20 BJ 6939 driven by its driver coming on the same road from east to west direction, hit the said motorcycle, as a result of which, the said Manikandan and two pillion riders were thrown away from the motorcycle and fell down on the road. In the accident, the said Manikandan and the two pillion riders who travelled along with him had sustained severe injuries. One of the pillion riders viz., Azaruddin Khan died on the spot. Immediately after the accident, the said Manikandan and another pillion rider viz., Ramzan Ali were taken to JIPMER Hospital, Puducherry for treatment. However, the another pillion rider viz., Ramzan Ali died on the way to Hospital. Thereafter, on the very same day of accident, the said Manikandan died at 4.52 a.m. Hence, the claimants filed claim petitions claiming compensation.

4. The appellant/Insurance Company had filed its separate counter statement denying all the averments made by the claimants in the aforesaid claim petitions. It is stated that on the date of accident, the said Manikandan was riding the motorcycle along with two pillion riders viz., Ramjan Ali & Azaruddin Khan in a rash and negligent manner; and all of them were not wearing helmet and their act of rash and negligent triple riding in a two wheeler had invited the accident and hence, the claim petitions may be dismissed.

5. List of Witnesses examined and Exhibits marked before the Tribunal:

(i) In M.C.O.P.No.575 of 2018, on the side of the claimants, 1st appellant examined himself as P.W.1 & two other witnesses as P.W.2 & P.W.3 and marked 18 documents as Exs.P1 to P18. On the side of the respondents, two witnesses were examined as R.W.1 & R.W.2 and one document was marked as Ex.X1.

(ii) In M.C.O.P.No.1004 of 2018, on the side of the claimants, 1st appellant examined herself as P.W.1 & one other witness as P.W.2 and marked 10 documents as Exs.P1 to P10. On the side of the respondents, two witnesses were examined as R.W.1 & R.W.2 and one document was marked as Ex.X1.

(iii) In M.C.O.P.No.1002 of 2018, on the side of the claimants, 1st appellant examined himself as P.W.1 & one other witness as P.W.2 and marked 14 documents as Exs.P1 to P14. On the side of the respondents, one witness was examined as R.W.1, but, no document was marked as exhibit.

6. Findings of the Tribunal in M.C.O.P.Nos.575, 1004 & 1002 of 2018:

(i) In M.C.O.P.No.575 of 2018, on appreciation of the oral and documentary evidence produced before it, the Tribunal arrived at the conclusion that the accident had occurred due to the rash and negligent driving of the driver of TATA Multi Axle Goods vehicle and contributory negligence of the deceased Manikandan who consumed alcohol and rode the motorcycle without wearing the helmet and hence, it fixed 75% contributory negligence on the driver of TATA Multi Axle Goods vehicle and 25% contributory negligence on the deceased Manikandan. Further, the Tribunal held that owner of the offending vehicle and insurer of the offending vehicle are jointly and severally liable to pay compensation to the claimants, however, being the insurer of the offending vehicle, appellant/Insurance Company is liable to pay the compensation to the claimants. Accordingly, the Tribunal directed the owner of the offending vehicle and insurer of the offending vehicle to pay a sum of Rs.17,99,250/- as compensation with interest at 7.5% per annum from the date of petition till the date of payment, to the claimants (respondents 1 to 4 in C.M.A.No.1128 of 2022).

(ii) In M.C.O.P.No.1004 of 2018, on appreciation of the oral and documentary evidence produced before it, the Tribunal arrived at the conclusion that the accident had occurred due to the rash and negligent driving of the driver of TATA Multi Axle Goods vehicle and contributory negligence of the deceased Ramjan Ali who travelled as pillion rider in the motorcycle without wearing the helmet and hence, it fixed 90% contributory negligence on the driver of TATA Multi Axle Goods vehicle and 10% contributory negligence on the deceased Ramjan Ali. Further, the Tribunal held that owner of the offending vehicle and insurer of the offending vehicle are jointly and severally liable to pay compensation to the claimants, however, being the insurer of the offending vehicle, appellant/Insurance Company is liable to pay the compensation to the claimants. Accordingly, the Tribunal directed the owner of the offending vehicle and insurer of the offending vehicle to pay a sum of Rs.17,11,800/- as compensation with interest at 7.5% per annum from the date of petition till the date of payment, to the claimants (respondents 1 & 2 in C.M.A.No.1461 of 2022).

(iii) In M.C.O.P.No.1002 of 2018, on appreciation of the oral and documentary evidence produced before it, the Tribunal arrived at the conclusion that the accident had occurred due to the rash and negligent driving of the driver of TATA Multi Axle Goods vehicle and contributory negligence of the deceased Azaruddin Khan who travelled as pillion rider in the motorcycle without wearing the helmet and hence, it fixed 90% contributory negligence on the driver of TATA Multi Axle Goods vehicle and 10% contributory negligence on the deceased Azaruddin Khan. Further, the Tribunal held that owner of the offending vehicle and insurer of the offending vehicle are jointly and severally liable to pay compensation to the claimants, however, being the insurer of the offending vehicle, appellant/Insurance Company is liable to pay the compensation to the claimants. Accordingly, the Tribunal directed the owner of the offending vehicle and insurer of the offending vehicle to pay a sum of Rs.17,51,400/- as compensation with interest at 7.5% per annum from the date of petition till the date of payment, to the claimants (respondents 1 to 4 in C.M.ANo.1622 of 2022).

7. Aggrieved over the quantum of compensation awarded by the Tribunal in M.C.O.P.Nos.575, 1004 & 1002 of 2018, the appellant/Insurance Company has preferred these appeals before this Court.

8. Mrs.C.Bhuvanasundari, learned counsel for the appellant/Insurance Company submitted that the compensation awarded by the Tribunal are very excessive.

9.1. As far as C.M.A.No.1128 of 2022 is concerned, the learned counsel submitted that the deceased Manikandan had a triple riding in the two wheeler without wearing the helmet and he was under the influence of alcohol at the time of accident. However, without considering all these aspects, the Tribunal had fixed only 25% contributory negligence on the deceased. Therefore, the learned counsel prayed this Court to enhance the percentage of contributory negligence fixed on the deceased. Further, the learned counsel submitted that though no documentary evidence was produced by the claimants to establish the avocation and income of the deceased, the Tribunal had fixed Rs.15,000/- as notional monthly income of the deceased and awarded a sum of Rs.22,68,000/- towards the head, 'Loss of Income' which is on the higher side and hence, the same may be reduced.

9.2. So far as C.M.A.Nos.1461 & 1622 of 2022 are concerned, the learned counsel submitted that at the time of accident, deceased Ramjan Ali was 17 years old & deceased Azaruddin Khan was 18 years old; and both of them were working as Assistant Cook in the Hotel viz., Punjabi Dhaba run by the deceased Manikandan. Even if it is assumed that deceased Ramjan Ali and deceased Azaruddin Khan could have worked nearly 28 days in a month and earned Rs.250/- per day, the Tribunal ought to have fixed only Rs.10,000/- as their notional monthly income, but, instead of which, the Tribunal had fixed Rs.12,000/- as their notional monthly income and awarded a sum of Rs.18,14,400/- under the head, 'Loss of Income' in M.C.O.P.No.1004 of 2018 as well as M.C.O.P.No.1002 of 2018 which is on the higher side and hence, the same may be reduced.

9.3. Further, the learned counsel submitted that at the time of accident, deceased Ramjan Ali was also under the influence of alcohol and he did not wear the helmet and hence, the Tribunal ought to have fixed 25% contributory negligence on him i.e., 15% for consuming alcohol & 10% for non-wearing of helmet; however, without doing so, it had fixed only 10% contributory negligence on the deceased for non-wearing of helmet.

10. Since the owner of the offending vehicle remained *ex-parte* before the Tribunal, this Court vide order dated 06.02.2023, dispensed with the issuance of notice to him.

11. Mr.R.Sreedhar, learned counsel appearing for respondents 1 to 4 in C.M.A.No.1128 of 2022 submitted that the alcohol level in the blood of deceased Manikandan was 0.064% g which is less than the permissible limit and hence, it cannot be said that the deceased was under the influence of alcohol at the time of accident, However, the Tribunal fixed 15% contributory negligence on the deceased for consuming alcohol. He further submitted that the quantum of compensation awarded by the Tribunal is just and reasonable and the same need not to be modified.

12. Mr.V.Iyyappan, learned counsel appearing for respondents 1 & 2 in C.M.A.No.1461 of 2022 as well as respondents 1 to 4 in C.M.A.No.1622 of 2022 submitted that deceased Ramjan Ali & deceased Azaruddin Khan were permanent residents of Bihar and they came to Pondicherry to eke out their livelihood; they worked as Assistant Cook in the Hotel run by the deceased Manikandan. He further submitted that considering the year of accident and also, taking into consideration the age & avocation of the

deceased at the time of accident, the Tribunal had rightly fixed Rs.12,000/- as notional monthly income of deceased Ramjan Ali & deceased Azaruddin Khan and hence, prayed for dismissal of the appeals.

13. Heard the learned counsel for the appellant/Insurance Company; learned counsel appearing for respondents 1 to 4 in C.M.A.No.1128 of 2022 & learned counsel appearing for respondents 1 & 2 in C.M.A.No.1461 of 2022 as well as respondents 1 to 4 in C.M.A.No.1622 of 2022 and perused the materials available on record.

**Discussion & Findings in C.M.A.No.1128 of 2022:**

14. Now, the two issues to be decided by this Court in C.M.A.No.1128 of 2022 are as follows:

(i) Whether 25% contributory negligence fixed on the part of deceased Manikandan by the Tribunal is correct?

(ii) Whether the quantum of compensation awarded by the Tribunal for the death of Manikandan is just and reasonable?

15. It is an admitted fact that on the date of accident, the deceased Manikandan consumed alcohol and rode the two wheeler along with two

pillion riders viz., Ramjan Ali & Azaruddin Khan without wearing the helmet. Though the learned counsel for the appellant/Insurance Company submitted that the alcohol level in the blood of deceased Manikandan was 0.064% g which is less than the permissible limit, this Court is of the view that riding a two wheeler after consuming alcohol cannot be justified.

16. Before the Tribunal, P.W.2 had deposed that on the date of accident, the deceased Manikandan was riding the two wheeler along with two pillion riders viz., Ramjan Ali and Azaruddin Khan, on the left extreme of the road and a TATA Multi Axle Goods vehicle which was coming in the opposite direction rammed into the two wheeler, whereas, R.W.1 had deposed that on seeing the two wheeler which was driven by the deceased Manikandan in a rash and negligent manner, he immediately stopped the Lorry, but, the deceased Manikandan rammed the two wheeler into the Lorry on his own.

17. Considering the manner in which the accident had occurred, this Court is of the opinion that the deposition of P.W.2 is more probable & acceptable if the deceased had rammed the two wheeler into the Lorry, the impact would not be so huge. However, taking note of the fact that the

deceased had ridden the two wheeler with two pillion riders without wearing the helmet and he had smelt of alcohol at the time of accident, this Court is of the opinion that there is no need to interfere with the finding of the Tribunal with regard to the fixation of 25% contributory negligence on the deceased Manikandan and hence, the same is confirmed.

18. As regards quantum of compensation awarded by the Tribunal is concerned, though the respondents 1 to 4 in C.M.A.No.1128 of 2022 had claimed that the deceased Manikandan was running a Hotel and he was earning not less than Rs.60,000/- per month, they did not produce any documentary evidence before the Tribunal to prove the avocation and income of the deceased. Even in the absence of income proof, the Tribunal had fixed Rs.15,000/- as notional monthly income of the deceased Manikandan and awarded a sum of Rs.22,68,000/- under the head, 'Loss of Income' which is just and reasonable. Similarly, the amount awarded by the Tribunal under all other heads are also just and reasonable. Hence, this Court is not inclined to modify/re-determine the quantum of compensation awarded by the Tribunal.

19. On overall consideration, this Court finds no merits in this appeal. Hence, C.M.A.No.1128 of 2022 is liable to be dismissed.

**Discussion & Findings in C.M.A.Nos.1461 & 1622 of 2022 :**

20. The two issues to be decided in C.M.A.Nos.1461 & 1622 of 2022 are as follows:

(i) Whether 10% contributory negligence fixed on deceased Ramjan Ali and deceased Azaruddin Khan by the Tribunal is correct?

(ii) Whether the quantum of compensation awarded by the Tribunal for the death of Ramjan Ali and Azaruddin Khan is just and reasonable?

21. So far as C.M.A.Nos.1461 & 1622 of 2022 are concerned, both the deceased viz., Ramjan Ali and Azaruddin Khan were not wearing the helmet at the time of accident and hence, the Tribunal had fixed 10% contributory negligence on them for non-wearing of helmet. Though the appellant/Insurance Company had contended before the Tribunal that the deceased Ramjan Ali was under the influence of alcohol at the time of accident, the Tribunal had not fixed any contributory negligence on deceased Ramjan Ali for consuming alcohol because the deceased Ramjan Ali was not riding the motorcycle and he travelled only as a pillion rider in

the motorcycle. This Court is of the opinion that the finding of Tribunal with regard to the fixation of 10% contributory negligence on deceased Ramjan Ali as well as deceased Azaruddin Khan is just and appropriate and hence, the said finding of the Tribunal is confirmed.

22. As regards quantum of compensation is concerned, the Tribunal had assumed that there is every possibility for deceased Ramjan Ali & deceased Azaruddin Khan to earn at least Rs.400/- per day and it had fixed Rs.12,000/- as notional monthly income of both the deceased. However, this Court is of the opinion that it would be just and appropriate to exclude the holidays period and fix a sum of Rs.10,000/- as notional monthly income of deceased Ramjan Ali & deceased Azaruddin Khan. Thus, by adding 40% towards future prospects of the deceased, deducting 50% towards personal expenses of the deceased and applying the multiplier '18', the compensation towards Loss of Income is re-determined as follows:

**Rs.10,000 + Rs.4,000 (40% of Rs.10,000) x ½ x 12 x 18 = Rs.15,12,000/-**

23. The compensation awarded under all other heads in C.M.A.Nos.1461 & 1622 of 2022 are just and reasonable and hence, the same are confirmed.

24. The break-up details of the re-determined compensation awarded by this Court in C.M.A.No.1461 of 2022 are as follows:

| Sl.No. | Description | Amount awarded by the Tribunal (Rs.) | Amount awarded by this Court (Rs.) | Award Confirmed or Enhanced or Granted or Reduced |
|---|---|---|---|---|
| 1 | Loss of Income | Rs.18,14,400/- | Rs.15,12,000/- | Reduced |
| 2 | Filial Consortium | Rs.44,000/- | Rs.44,000/- | Confirmed |
| 3 | Transport Expenses | Rs.10,000/- | Rs.10,000/- | Confirmed |
| 4 | Funeral Expenses | Rs.16,500/- | Rs.16,500/- | Confirmed |
| 5 | Loss of Estate | Rs.16,500/- | Rs.16,500/- | Confirmed |
| Total | | Rs.19,01,400/- | Rs.15,99,000/- | --- |
| Rounded Off | | Rs.19,02,000/- | --- | --- |
| Less 10% for contributory negligence on the part of the deceased. | | Rs.1,90,200/- | Rs.1,59,900/- | --- |
| Net Compensation payable to the claimants | | Rs.17,11,800/- | Rs.14,39,100/- | Reduced by Rs.2,72,700/- |

25. The break-up details of the re-determined compensation awarded by this Court in C.M.A.No.1622 of 2022 are as follows:

| Sl.No. | Description | Amount awarded by the Tribunal (Rs.) | Amount awarded by this Court (Rs.) | Award Confirmed or Enhanced or Granted or Reduced |
|---|---|---|---|---|
| 1 | Loss of Income | Rs.18,14,400/- | Rs.15,12,000/- | Reduced |
| 2 | Filial Consortium | Rs.88,000/- | Rs.88,000/- | Confirmed |

| Sl.No. | Description | Amount awarded by the Tribunal (Rs.) | Amount awarded by this Court (Rs.) | Award Confirmed or Enhanced or Granted or Reduced |
|---|---|---|---|---|
| 3 | Transport Expenses | Rs.10,000/- | Rs.10,000/- | Confirmed |
| 4 | Funeral Expenses | Rs.16,500/- | Rs.16,500/- | Confirmed |
| 5 | Loss of Estate | Rs.16,500/- | Rs.16,500/- | Confirmed |
| Total | | Rs.19,45,400/- | Rs.16,43,000/- | --- |
| Rounded Off | | Rs.19,46,000/- | --- | --- |
| Less 10% for contributory negligence on the part of the deceased. | | Rs.1,94,600/- | Rs.1,64,300/- | --- |
| Net Compensation payable to the claimants | | Rs.17,51,400/- | Rs.14,78,700/- | Reduced by Rs.2,72,700/- |

26. In the result,

(i) C.M.A.No.1128 of 2022 is dismissed. No costs.

(ii) C.M.A.No.1461 of 2022 is partly allowed and the compensation of Rs.17,11,800/- awarded by the Tribunal is re-determined as Rs.14,39,100/- (Rupees Fourteen Lakhs Thirty Nine Thousand and One Hundred only) together with interest at 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount of Rs.14,39,100/-, after deducting the amount(s), if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit (excluding the default period, if any), to the credit of M.C.O.P.No.1004 of 2018, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, 1st respondent is permitted to withdraw her share of the award amount along with proportionate interest and cost, as per the apportionment fixed by the Tribunal. So far as the share of 2nd respondent is concerned, the appellant respondent/Insurance Company shall deposit the same in Fixed Deposit in any one of the Nationalized Banks, till he attains majority and the interest accrued thereon shall be withdrawn by his guardian once in three months, directly from the Bank. The claimants are directed to pay the necessary Court fee, if any, before receiving the copy of this judgment. No costs.

(iii) C.M.A.No.1622 of 2022 is partly allowed and the compensation of Rs.17,51,400/- awarded by the Tribunal is re-determined as Rs.14,78,700/- (Rupees Fourteen Lakhs Seventy Eight Thousand and Seven Hundred only) together with interest at 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount of Rs.14,78,700/-, after deducting the amount(s), if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit (excluding the default period, if any), to the credit of M.C.O.P.No.1002 of 2018, within a period of six weeks from the date of receipt of a copy of this judgment.

On such deposit being made, the respondents 1 to 4 are permitted to withdraw their respective share of the award amount along with proportionate interest and cost, as per the apportionment fixed by the Tribunal. The claimants are directed to pay the necessary Court fee, if any, before receiving the copy of this judgment. No costs. Consequently, connected miscellaneous petitions are closed.

**01.08.2023**

mrr

Index : Yes/No

Speaking Order (or) Non-Speaking Order

To

1.The II Additional District Judge,
Motor Accident Claims Tribunal, Puducherry.

2.The Section Officer,
Vernacular Records Section,
High Court, Madras.

**SUNDER MOHAN, J.**

mrr/dk

C.M.A.Nos.1128, 1461 & 1622 of 2022

01.08.2023