**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 15.12.2023**

**CORAM :**

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN**
**and**
**THE HONOURABLE MR.JUSTICE N.SENTHIL KUMAR**

**C.M.A.Nos.1070 & 2689 of 2022**

C.M.A.1070/2022

1.Rani Nagalakshmi
2.E.Varshinee ... Appellants

-Vs-

1.Srinivasan
2.M/s.United India Insurance Co., Ltd
Branch Office, No.2, 77, A.A.Road
Salem City, Salem- 636 001.
3.V.Padmavati ... Respondents

**Prayer :** Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 to allow the appeal and enhance the compensation in MCOP No.1415 of 2016 dated 10.08.2021 on the file of the Motor Accidents Claims Tribunal / Special District Judge, MCOP Tribunal, Salem.

For Appellants : Ms.Ramya V.Rao
For Respondents : Mr.D.Bhaskaran - for R2
R1 and R3 - Served, no appearance

**C.M.A.No.2689 of 2022**

M/s.United India Insurance Co., Ltd
Branch Office, No.2, 77, A.A.Road
Salem City, Salem- 636 001. ... Appellant

-Vs-

1.Rani Nagalakshmi
2.E.Varshinee
3.V.Padmavathi
4.Srinivasan ... Respondents

**Prayer :** Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 10.08.2021 made in MCOP No.1415 of 2016 dated 10.08.2021 on the file of the Motor Accidents Claims Tribunal / Special District Judge, MCOP Tribunal, Salem.

For Appellants : Mr.D.Bhaskaran
For Respondents : Ms.Ramya V.Rao - for R1 and R2
R3 and R4 - Served, no appearance

**J U D G M E N T**

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.)**

The insurance company and the claimants are on appeal challenging the award made in M.C.O.P.No.1415 of 2016 on the file of the Motor Accidents Claims Tribunal (Special District Court), Salem granting a sum of Rs.1,31,13,040/- as compensation for the death of one Dr.V.Elangovan in a motor accident that took place on 12.02.2016.

**2.** According to the claimants, who are the wife, daughter and mother of the deceased, while the deceased was riding his motor cycle bearing Registration No.TN-30-6521, at about 21.30 Hours near Gandhi Stadium on the extreme left side of the road, the first respondent who was also riding the motor cycle bearing Registration No.TN-54-E-6045 came in the opposite direction and hit against the motor cycle that the deceased was riding. As a result of the impact, the deceased was thrown off the vehicle and he sustained multiple fractures and head injuries. As a result of the injuries suffered, the said Dr.Elangovan died on the spot. The claimants claimed that the negligence on the part of the rider of the motor cycle bearing Registration No.TN-54-E-6045 was the sole cause of the accident and attempted to justify the quantum by contending that Dr.Elangovan was a Professor and Head of the Department of Microbiology in the Government Rajaji Medical College Hospital, Salem and was drawing a salary of Rs.1,24,885/- per month apart from doing private practice and owning a medical lab.

**3.** The insurance company resisted the claim contending that the accident did not occur in the manner suggested by the claimants. According to the insurance company, the road in which Dr.Elangovan was riding was a one-way and he was on the wrong side of the road. The fact that Dr.Elangovan had gone on a one-way would by itself show that the accident occurred due to his negligence and not due to the negligence of the rider of the motorcycle bearing Registration No.TN-54-E-6045. The quantum of compensation claimed was termed as excessive and the claimants were put to strict proof of the age and income particulars as pleaded by them.

**4.** Before the Tribunal, P.Ws.1 and 2 were examined and Exs.P1 to P15 were marked. The Aadhar card of the witness P.W.2 was marked as Ex. X1. The insurance company did not let in any evidence, either oral or documentary. On the evidence available, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the motorcycle bearing Registration No.TN-54-E-6045 by the first respondent. Having held that the accident occurred due to the rash and negligent driving of the motorcycle of the first respondent, the Tribunal concluded that the insurance company is liable to pay the compensation as the insurer of the said vehicle.

**5.** Addressing the claim relating to violation of traffic rules by Dr.Elangovan, since it was admitted that he was riding in the wrong direction on a one-way road, the Tribunal held that though it may be a violation of the traffic rules, it would not amount to rash and negligent driving and it cannot be held that Dr.Elangovan contributed to the accident. In coming to the said conclusion, the Tribunal relied upon the sketch which was marked as Ex.P5, which showed that the deceased was riding the motorcycle on the extreme left side of the road and the offending vehicle viz., the motorcycle Registration No.TN-54-E-6045 came in the opposite direction and dashed against the motorcycle of the deceased. According to the Tribunal, the manner in which the accident had occurred would show that the deceased had not contributed to the accident.

**6.** On the quantum, the Tribunal took the monthly income as found in the salary certificate at Rs.1,24,885/- per month. It applied a multiplier of 13 and deducted 1/3rd towards personal expenses. Therefore, the Tribunal came to the conclusion that the loss of dependency would be Rs.1,29,88,040/-. The Tribunal granted Rs.20,000/- each to the claimants for loss of love and affection. It also granted Rs.40,000/- to the wife / first claimant for loss of consortium. It granted Rs.25,000/- towards funeral expenses. In all, the Tribunal awarded a sum of Rs.1,31,13,040/-.

**7.** Mr. D.Bhaskaran, learned counsel appearing for the insurance company would vehemently contend that the Tribunal ought not to have fixed 100% negligence on the rider of the motorcycle insured with the insurance company. The learned counsel would submit that the fact that the deceased was traveling on the wrong side in a one-way road, which according to him would be enough to conclude that there was certain negligence on the part of the deceased and such negligence had contributed to the accident.

**8.** Contending contra, Ms. Ramya V Rao learned counsel appearing for the claimants would submit that the accident had occurred at 9.30 p.m and even according to the evidence of P.W.2, it was common for people to drive on the one-way road which is a service lane and therefore, according to the learned counsel the fact that the deceased was riding on the wrong side of the one-way road by itself, as rightly pointed by the Tribunal, would not lead to the inference that he was negligent. She would also point out that all violations of traffic rules cannot be treated as contributing factors for a motor accident. She would also submit that the Tribunal had not added any amount towards future prospects, which is mandatory as per the judgment of the Hon'ble Supreme Court in **National Insurance Company -vs- Pranay Sethi and Others (2017 SCC Online 1270)**. She would also fault the Tribunal for having awarded only Rs.20,000 towards loss of love and affection to the daughter and the mother of the deceased. Non-grant of any amount towards loss of estate is also made a ground of challenge.

**9.** We have considered the rival submissions made by the learned counsel for both sides and have perused the materials placed on record.

**10.** No doubt, we see considerable force in the contention of the learned counsel for the insurance company regarding violation of traffic rules. P.W.2 in his evidence has admitted that Dr.Elangovan was riding the motorcycle in a one-way road on the wrong side. He has also added that it is quite common for people to take that service lane since the other way is too circuitous. The insurance company has not let in any evidence. The rider of the two wheeler was not examined to prove contributory negligence. We have repeatedly pointed out that contributory negligence is also a fact to be proved as any other fact and in the absence of any evidence on the side of the insurance company, the insurance company will be precluded from raising the issue of contributory negligence. But, in the case on hand, as rightly pointed out by Mr.Bhaskaran, there is evidence of P.W.2 who is examined as an eye witness would show that the deceased was riding his motorcycle in a one-way on the wrong direction. We will have to necessarily examine as to whether such riding in a one-way road on the wrong direction would by itself be sufficient to conclude that there was negligence on the part of the rider of the two wheeler. Unless such negligence is demonstrated, we do not think we can conclude that the deceased has contributed to the accident by riding on the motorcycle in a one-way on the wrong direction.

**11.** As we have already pointed out, there is no evidence on record on the side of the insurance company to establish the contributory negligence. We will have to go by the evidence of P.W.2 / eye witness. P.W.2 has admitted that Dr. Elangovan was riding the motorcycle in a wrong direction in a one-way road, at the same time P.W.2 has also added that it was very common for people to go on the wrong direction in the said road since it is a service road. We are therefore inclined to accept the contention of Ms. Ramya V Rao on the aspect of negligence. Riding in the wrong direction in a one-way road is in violation of the traffic rules. In order to make it an element for testing the contributory negligence, there must be some evidence on the side of the insurance company on the manner of the accident.

In the absence of such evidence, we do not think we can conclude that the deceased has contributed to the accident. We therefore affirm the findings of the Tribunal that the accident occurred due to the rashness and negligence of the rider of the motorcycle which is insured with the insurance company. It was open to the insurance company to have examined the rider of the two wheeler to establish some negligence on the part of the deceased, the absence of such evidence would only lead to the conclusion that the rider of the motorcycle which is insured with the insurance company alone was responsible for the accident.

**12.** Adverting to the quantum of the compensation, as rightly pointed out by Ms. Ramya V Rao, the Tribunal has omitted to add any amount towards future prospects. The deceased was aged about 47 years and he was in a permanent employment. Therefore, the Tribunal should have added 30% towards future prospects. The amounts awarded on the heads of loss of love affection and loss of consortium should also need to be re-looked since we find that the same is not in accordance with the judgment of the Hon'ble Supreme Court in **National Insurance Company -vs- Pranay Sethi and Others (2017 SCC Online 1270).**

**13.** The amount awarded for the purpose of funeral expenses is on the higher side, while no award has been made on the head of loss of estate. While it is contended that Dr. Elangovan had private practice and he was making a fortune out of it, there is no evidence to establish such private practice. No doubt, government doctors are not debarred from having private practice in the State. But, unless there is evidence to show that there is income from such private practice, we cannot notionally add any amount towards income from private practice. From the material available ie., Ex. P.12, it is seen that the deceased was earning a sum of Rs.1,24,885/- per month. To this, we have to add 30% towards future prospects. We will have to deduct 1/3rd towards personal expenses and apply the proper multiplier, which is 13.

**14.** If so worked out, the loss of dependency would be Rs.1,24,885 + Rs.57,465 X 12 = Rs.19,48,200/-

| | |
|---|---|
| Less : Income Tax | = Rs. 4,09,460/- |
| | ------------------- |
| Income Per Year | = Rs.15,38,740/- X 13 |
| Total Loss of income | = Rs.2,00,03,620/- |

In this, we have to deduct 1/3rd towards personal expenses. Balance amount after deduction of 1/3rd towards personal expenses would be Rs.1,33,35,746/-. This will be the compensation towards loss of dependency. We will have to add compensation for loss of love and affection and consortium for the three claimants at Rs.40,000/- each and Rs.15,000/- each towards funeral expenses and loss of estate. Thus, total compensation works out to Rs.1,34,85,746/-.

**16.** In view of the above, the appeal filed by the insurance company in CMA

No.2689 of 2022 will stand partly allowed. There will be an award for a sum of Rs.1,34,85,746/- with interest at the rate of 7.5% per annum as granted by the Tribunal in favour of the claimants in MCOP No.1415 of 2016 on the file of the Motor Accidents Claims Tribunal (Special District Court), Salem. The Tribunal had apportioned the award between the mother, wife and daughter of the deceased. Ms.Ramya V Rao learned counsel appearing for the appellants in CMA No.1070 of 2022 has produced a memo that was filed by the mother, who is added as third respondent in CMA No.1070 of 2022, wherein she has given up her claim over the amounts awarded in MCOP No.1415 of 2016 in a suit for partition filed by her before the Principal District Munsif, Salem in O.S.No.474 of 2016. Recording the said memo, the Court has also dismissed her suit in O.S.No.474 of 2016.

**17.** In view of the same, we apportion the compensation between the wife and daughter of the deceased as follows.

- Wife of the deceased / first appellant will take Rs.74,85,746/-
- Daughter of the deceased / second appellant will take Rs.60,00,000/-

The parties are directed to bear their own costs in both the appeals. It is stated that the insurance company has deposited a sum of Rs.1 Crore. The balance award amount shall be deposited by the insurance company within a period of twelve weeks. On such deposit, the claimants shall be permitted to withdraw the entire amount.

**18.** After we dictated the order, Ms. Ramya V Rao would submit that the claimants would be entitled to refund of excess court fee paid by them invoking the second proviso to Rule 24 of the Tamil Nadu Motor Accidents Claims Tribunal rules, 1989. Rule 24 of the said rules reads as follows:

*24. Every application under sub-section (1) of section 166 of the Act for payment of compensation shall be accompanied by a fee of Re.l (Rupee one only) in the form of court fee stamp, if the claim in a case of accident is confined to special damage is and if any further general damage is claimed, an advalorem fee shall be charged on the aggregate of the special and general damage claims on the following scale, namely:—*

*THE TABLE*

| Amount of claim (1) | Amount of Court-fee (2) |
|---|---|
| Upto Rs.10,000 | Rs.10 |
| Rs.10,001 to Rs.50,000 | Rs. 10 plus one-fourth per cent of the amount by which the claim exceeds Rs.10,000. |
| Rs.50,001 to Rs.1,00,000 | Rs.122.50 plus half per cent of the amount by which the claim exceeds Rs.50,000. |
| Over Rs.1,00,000 | Rs.372.50 plus one per cent of the amount by which the amount of claim exceeds Rs.1,00,000. |

*(1-A) An appeal under section 173 of the Act shall be accompanied by a fee of Re.l(Rupee one only) in the form of Court-fee stamp, if the claim in a case of accident is confined to special damages and if any further general damage is claimed, an advalorem fee shall be charged on the*

*aggregate of the special and general damages claim on the following scales, namely:—*

| *Amount of claim (I)* | *Amount of Court-fee (2)* |
|---|---|
| *Below Rs.2,000* | *No appeal.* |
| *Rs.2,001 to 5,000* | *Rs.10* |
| *Rs.5,001 to 50,000* | *Rs.10 plus one-fourth per cent of the amount by which the claim exceeds Rs.5000.* |
| *Rs.50,001 to 1,00,000* | *Rs.122.50 plus half per cent of the amount by which the claim exceeds Rs.50000.* |
| *Over Rs.1,00,000* | *Rs.372.50 plus one per cent of the amount by which the claim exceeds Rs.1,00,000.* |

*(3) The Claims Tribunal may, in its discretion exempt any party from the payment of fees prescribed under sub-rule (1)*

*Provided that where a claim of a party has been accepted by the Claims Tribunal the party shall have to pay the prescribed fees, exemption in respect of which has been granted initially before a copy of the judgment is obtained:*

***Provided further that where the amount of award is less than the amount of claim, the party shall be entitled to refund of the proportionate fee, namely the difference between the fee actually paid and the fee due if the claim had been made for the amount of award.***

***(emphasis supplied)***

**19.** A reading of the second proviso to Rule 24 extracted above would show that the Court is empowered to direct refund of the proportionate court fee where the amount of the award is less than the amount of the claim. We are alive to the fact that a learned single Judge in **Thirumalai and another -vs- Divisional Manager, New India Assurance Co., Ltd and others** made in C.M.P.Nos.4119 of 2022 etc., batch dated 05.05.2022, while considering the language of sub-rule(3) of Rule 24 held that the power to exempt the claimants from paying the court fee is available only to the Tribunal and not to this Court in an appeal. Sub-rule(3) of Rule 24 clearly empowers the Claims Tribunal only since it starts with the words **"the Claims Tribunal may"**. The language used in the proviso which is relied upon by Ms. Ramya V Rao is much wider and it does not restrict its operation only to matters before the Claims Tribunal. All that it says is, where the amount awarded is less than the amount of the claim, the parties would be entitled to refund of the proportionate court fee.

**20.** Therefore, we see considerable force in the submission of the learned counsel for the claimants. From the grounds of appeal, we find that the claimants have paid the court fee of Rs.5,00,000/- for a claim of Rs.5,00,00,000/-. We have awarded only a sum of Rs.1,34,85,746/-. Therefore, the claimants would be entitled to a refund of a sum of Rs.3,65,142.54/-, which is the court fee paid for the difference amount. This interpretation of ours has the support of the judgment of the Hon'ble Supreme Court in **High Court of Judicature at Madras represented**

**by Registrar General -vs- M.C.Subramaniam and Others** reported in **(2021) 3 SCC 560**, where the Hon'ble Supreme Court has underlined the need for the liberal interpretation of the taxing statute viz., the Court Fees Act. Therefore, the Registry is directed to refund a sum of Rs.3,65,142.54/- to the appellants / claimants herein.

**(R.S.M.,J.) (N.S.,J.)**
**15.12.2023**

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KST

To

1.The Motor Accidents Claims Tribunal
(Special District Judge, MCOP Tribunal,
Salem.

2.M/s.United India Insurance Co., Ltd
Branch Office, No.2, 77, A.A.Road
Salem City, Salem- 636 001.

**R.SUBRAMANIAN, J.**
**and**
**N.SENTHIL KUMAR, J.**

KST

**C.M.A.Nos.1070 & 2689 of 2022**

**15.12.2023**