WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM :
THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.Nos.304 of 2018 and 1549 of 2018

1.Palaniamml
2.Mahalingam ... Appellants
in C.M.A.No.304/2018

Aravind ... Appellant
in C.M.A.No.1549/2018

Vs.

1.Jayasankar
2.United India Insurance Co., Ltd.,
146 N, Kumar Complex,
Tiruchengode Taluk,
Namakkal District.
3.Kumaravel
4.National Insurance Co., Ltd.,
74-A, Paramathi Road,
Namakkal – 637 001.
5.Venugopal
6.Reliance Insurance Co., Ltd.,
#15A, Pla Kanagu Town,
2nd Floor, Thillai Nagar,
Trichy – 620 018. ... Respondents
in both C.M.As

[Notice to R1, R3 & R5 may be dispensed
with for the set *ex-parte* before the tribunal]

https://www.mhc.tn.gov.in/judis

WEB COPY

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 11.10.2017 made in M.A.C.T.O.P.Nos.478 and 759 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

For Appellants	:	Mr.T.S.Arthanareeswaran
For Respondents	:	Mr.D.Bhaskaran, for R2 Mr.P.Suresh Srinivasan for R6 No appearance for R4 R1, R3 and R5 *ex-parte* before the Tribunal

COMMON JUDGMENT

These Civil Miscellaneous Appeals are arising out of the common judgment dated 11.10.2017 passed in M.C.O.P.Nos.478 and 759 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

2. For the purpose of convenience, the parties are described as per their ranking before the Tribunal.

3.The facts in a nutshell are as follows :

https://www.mhc.tn.gov.in/judis

WEB COPY

(i) On 31.12.2012 at about 10.00 p.m the deceased Boopathiraja was riding a two wheeler viz., Apache bike bearing Registration No.TN 48 K 6388, belonging to the fifth respondent and insured with the sixth respondent and the claimant (Aravind) in M.C.O.P.No.759 of 2013 and one Kavinkumar are the pillion riders of the said two wheeler. When they were proceeding on the extreme left of the road, towards Tiruchengode to Koottapalli, Namakkal, a Maruthi Zen Car bearing Registration No.TN 49 V 2877, belonging to the first respondent and insured with the second respondent and a Lorry bearing Registration No.TN 28 QL 3025, belonging to the third respondent and insured with the fourth respondent, came from opposite direction, driven by its driver in a rash and negligent manner, hit the two wheeler. Due to the said impact, the deceased Boopathiraja succumbed to injuries, the deceased Kavinkumar succumbed to injuries on the way to the hospital and one Aravind sustained grievous injuries and he was taken to Tiruchengode Government Hospital for first-aid and then he was shifted to Erode KMCH Hospital for further treatment.

(ii) The deceased Boopathiraja was aged about 19 years at the

https://www.mhc.tn.gov.in/judis

WEB COPY

time of accident and he was a power loom worker and was earning a sum of Rs.10,000/- per month. Due to the sudden demise of the deceased, the claimants, who are the parents of the deceased lost their livelihood. Hence, the claimants filed the claim petition in M.C.O.P.No.478 of 2013 claiming a sum of Rs.10,00,000/- as compensation for the death of the deceased.

(iii) The injured/claimant (Aravind) was aged about 20 years at the time of accident and he was also a power loom worker and earning a sum of Rs.10,000/- per month. Due to the accident, the claimant is completely disabled and even he could not do his work and hence, he filed the claim petition in M.C.O.P.No.759 of 2013 claiming a sum of Rs.50,00,000/- as compensation.

4. Before the Tribunal, the first respondent/owner of the Maruthi Zen Car bearing Registration No.TN 49 V 2877, the third respondent/owner of the Lorry bearing Registration No.TN 28 QL 3025 and the fifth respondent/owner of the two wheeler (Apache) bearing Registration No.TN 48 K 6388 remained *ex-parte.*

5. The claim petitions were resisted by the second respondent/ United India Insurance Co., Ltd., the fourth respondent/National Insurance

https://www.mhc.tn.gov.in/judis

WEB COPY

Co., Ltd., and the sixth respondent/Reliance Insurance Co., Ltd., by filing counter statements denying the manner of accident as projected by the claimants in the claim petitions. They also denied the avocation and income and other claims mentioned in the claim petitions.

6. In order to prove the claim, on the side of the claimants, P.W.1 to P.W.7 were examined and Ex.P1 to Ex.P26 were marked. On the side of the respondents, R.W.1 to R.W.4 were examined and Ex.R1 to Ex.R3 were marked and Ex.C1 to Ex.C5 were marked as Court documents.

7. The Tribunal after analysing the entire evidence, found that as the accident had occurred due to the rash and negligent driving of the driver of the car and also the rider of the two wheeler, who allowed two pillion riders along with him and hence, fixed contributory negligence at 20% on the driver of the two wheeler and fixed contributory negligence at 80% on the driver of the car and also found that the respondents 2 and 6 are jointly and severally liable to pay compensation. Since there was no fault on the driver of the lorry, the Tribunal exonerated respondents 3 and 4 from the liability and dismissed the claim petition against them. By coming to such

https://www.mhc.tn.gov.in/judis

WEB COPY

conclusion, the Tribunal has passed an award for a sum of **Rs.6,61,000/-** in M.C.O.P.No.478 of 2013 and a sum of **Rs.14,25,185/-** in M.C.O.P.No.759 of 2013. Since there is a violation of policy conditions, the Tribunal granted an order of pay and recovery. Therefore, the sixth respondent/Insurance Company has to pay the compensation at first instance and thereafter, recover the same from the fifth respondent/owner of the two wheeler. The break-up details of the compensation awarded by the Tribunal in each of the M.C.O.Ps are as under :

(i) In M.C.O.P.No.478 of 2013

S. No.	***Heads under which the amount is awarded by the Tribunal***	***Amount awarded by the Tribunal in Rs.***
1.	Loss of Dependency	6,48,000
2.	Loss of Estate	1,000
3.	Funeral Expenses	5,000
4.	Love and affection	2,000
5.	Transportation	5,000
	Total	**6,61,000**
	Less 80 % contributory negligence of 2nd respondent	**5,28,800**
	Less 20% contributory negligence of 6th respondent	**1,32,200**

https://www.mhc.tn.gov.in/judis

WEB COPY

(ii) In M.C.O.P.No.759 of 2013

S. No.	*Heads under which the amount is awarded by the Tribunal*	*Amount awarded by the Tribunal in Rs.*
1.	Loss of earnings	12,96,000
2.	Transport to hospital	5,000
3.	Extra nourishment	10,000
4.	Attender charges	20,000
5.	Other medical expenses	89,184.91
6.	Compensation for pain and suffering	5,000
	Total	**14,25,184.91** **rounded off 14,25,185**
	Less 80 % contributory negligence of 2nd respondent	**11,40,148**
	Less 20% contributory negligence of 6th respondent	**2,85,037**

8. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appeals have been filed by the claimants for enhancement of the compensation amount.

9. The learned counsel for the appellants/claimants submitted that the deceased Boopathiraja was riding the two wheeler bearing Registration No.TN 48 K 6388 along with pillion riders namely Kavinkumar and Aravind with due care and caution on the extreme left side

https://www.mhc.tn.gov.in/judis

WEB COPY

of the road, however, Maruthi Zen Car bearing Registration No.TN 49 V 2877, came from the opposite direction in a rash and negligent manner and over took the Lorry bearing Registration No.TN 28 QL 3025 and dashed against the two wheeler. Originally, F.I.R was registered against both the driver of the Lorry and the driver of the Car, subsequently, after investigation charge sheet was filed only against the driver of the Car. Therefore, there is no contributory negligence on the part of the deceased persons and the injured claimant. Though the Tribunal found that the entire negligence on the part of the driver of the Car, fixed 20% contributory negligence on the part of the deceased persons and the injured claimant. At the time of accident, the offending Car was insured with the second respondent/United India Insurance Co., Ltd. and hence, they are liable to pay compensation.

10. The learned counsel for the appellants/claimants further submitted that the deceased Boopathiraja and the injured claimant Aravind were working as power loom workers and earning a sum of Rs.10,000/- per month. In order to prove the same, one Jayakumar, who is the employer of

https://www.mhc.tn.gov.in/judis

WEB COPY

the power loom was examined as P.W.7 and he categorically admitted the same. However, the Tribunal erroneously fixed the notional income at Rs.6,000/- for both the deceased and the injured claimant and deducted 1/2 of the amount towards personal and living expenses of the deceased Boopathiraja. The Tribunal also not considered the loss of future prospects for both the deceased and the injured claimant. He further submitted that the Tribunal awarded a meager compensation under head Medical bills i.e. Rs.89,185/-, instead, Rs.10,54,774/- and the amounts awarded under all other heads are on the lower side. Hence, the award passed by the Tribunal is not just and reasonable compensation.

11. The learned counsel for the second respondent/United India Insurance Co., Ltd., submitted that Ex.P1/F.I.R, Ex.P4/rough sketch and Ex.P2 and Ex.P3/Motor Vehicles Report clearly show that the accident took place in the middle of the road. Further, the deceased Boopathiraja, without having any valid driving licence, drove the two wheeler in the middle of the road along with two pillion riders in a rash and negligent manner and caused the accident and hence, he is the tort-feasor. In the said accident the lorry got damaged on the right side and the car got damaged on the left side.

https://www.mhc.tn.gov.in/judis

WEB COPY

If really, the two wheeler was driven on the left side of the road, then the right side of the car might have been damaged. Since there is no negligence on the part of the driver of the Car, the Tribunal ought to have fixed entire negligence on the part of the deceased Boopathiraja.

12. The learned counsel for the sixth respondent/Reliance Insurance Co., Ltd., submitted that at the time of accident, the driver of Car failed to take notice of the two wheeler, which is coming in front of the lorry and overtook the lorry, thereby, the accident had occurred and F.I.R and charge sheet also registered against the driver of the Car. Hence, there is no negligence on the part of the deceased Boopathiraja. The Tribunal failed to appreciate the entire evidence and wrongly fixed 20% negligence on the part of the deceased.

13. Heard the learned counsel for both sides and perused the materials available on record.

14. On a perusal of the records, it is seen that though F.I.R was registered against the driver of the Car and the Lorry, subsequently, after investigation, the driver of the Lorry was exonerated from the charges. At

https://www.mhc.tn.gov.in/judis

WEB COPY

the time of accident, the driver of the Car overtook the Lorry and that there was a head on collision between the Car and the two wheeler. Therefore, the Tribunal rightly fixed 80% negligence on the part of the driver of the first respondent's Car and 20% negligence on the part of the driver of two wheeler. Since the driver of the two wheeler did not possess valid driving licence at the time of the accident, which amounts to violation of policy conditions, the Tribunal rightly directed 6th respondent/Insurance Company to pay their share of compensation i.e. 20% at first instance and thereafter, permitted them to recover the same from the owner of the two wheeler. This Court does not find any perversity in appreciation of the evidence.

In C.M.A.No.304 of 2018 (M.C.O.P.No.478 of 2013)

15. So far as quantum of compensation awarded by the Tribunal in M.C.O.P.No.478 of 2013 is concerned, it is the submission of the learned counsel for the appellants that the deceased Boopathiraja was working as a power loom worker and earning a sum of Rs.10,000/- per month and to prove the same, the monthly salary list of the deceased was marked as Ex.P26 and also the owner of the power loom was examined as

https://www.mhc.tn.gov.in/judis

WEB COPY

P.W.7. However, the claimants have not produced any document to prove the ownership of P.W.7. There was lack of materials to prove the employment and earning capacity of the deceased. Therefore, the Tribunal has fixed a sum of Rs.6,000/- as notional income and resultantly, the annual income of the deceased was arrived at a sum of Rs.72,000/- [6,000 x 12]. Since the deceased Boopathiraja died as a bachelor, the Tribunal deducted 1/2 of the amount towards personal and living expenses of the deceased and arrived at the annual loss of contribution at Rs.36,000/- [72,000 - 36,000]. Considering the age of the deceased being 19 at the time of the accident, the Tribunal by applying multiplier "18", arrived at the "Loss of Dependency" at Rs.6,48,000/- [36,000 x 18]. This Court finds that the amount awarded under the head "Loss of Dependency" is just and fair and hence, there is no reason to enhance the same.

16. It is the further submission of the learned counsel for the appellants/claimants that the Tribunal, while calculating the amount under the head "Loss of Dependency", ought to have added Future prospects. As per the oft-quoted judgment of the Hon'ble Supreme Court in ***National***

https://www.mhc.tn.gov.in/judis

WEB COPY

Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680] future prospects shall be added only when the deceased had a permanent job, self employment or on a fixed salary. However, in the case on hand, there is no concrete evidence to prove the employment and income of the deceased and hence, the Tribunal not added future prospects. This Court does not find any perversity in appreciation of the evidence.

17. Further, the sum of Rs.5,000/- awarded by the Tribunal under the head "Funeral Expenses" appears to be on the lower side and as such, the same is hereby enhanced to Rs.25,000/-. Similarly, the sum of Rs.2,000/- awarded by the Tribunal towards "Love and affection" is also on the lower side and hence, the same is enhanced to Rs.50,000/- each [50,000+50,000] to the legal heirs of the deceased.

18. Further, the amounts awarded by the Tribunal under all the other heads are fair and reasonable, and hence, they are confirmed.

19. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

https://www.mhc.tn.gov.in/judis

WEB COPY

Sl. No	*Head under which the compensation is awarded*	*Amounts awarded by the Tribunal in Rs.*	*Amounts awarded by this Court in Rs.*
1.	Loss of Dependency	6,48,000	6,48,000
2.	Loss of Estate	1,000	1,000
3.	Funeral Expenses	5,000	25,000
4.	Love and affection	2,000	1,00,000
5.	Transportation	5,000	5,000
	Total	**6,61,000**	**7,79,000**
	Less 80 % contributory negligence of 2nd respondent	**5,28,800**	**6,23,200**
	Less 20% contributory negligence of 6th respondent	**1,32,200**	1,55,800

20 (i) The total compensation of Rs.**6,61,000**/- awarded by the Tribunal is hereby enhanced to Rs.**7,79,000**/-, which shall carry interest at 7.5% p.a. from the date of claim petition till the date of payment. The second respondent/United India Insurance Co., Ltd., is directed to deposit 80% of the enhanced amount ie. Rs.**6,23,200/-** awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. Further, the sixth respondent/Reliance General Insurance Co., Ltd., is directed to deposit 20% of the enhanced amount ie. Rs.**1,55,800/-** awarded by this Court before the Tribunal, after adjusting the amount if any already

https://www.mhc.tn.gov.in/judis

WEB COPY

deposited, within a period of six weeks from the date of receipt of a copy of this judgment.

(ii) On such deposit, the claimants are permitted to withdraw their respective shares. The apportionment of shares fixed by the Tribunal to the claimants is hereby confirmed. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation. Thereafter, the sixth respondent Insurance Company is permitted to recover the above compensation amount from the fifth respondent /owner of the two wheeler bearing Registration No. TN 48 K 6388.

In C.M.A.No.1549 of 2018 (M.C.O.P.No.759 of 2013)

21. So far as quantum of compensation awarded by the Tribunal in M.C.O.P.No.759 of 2013 is concerned, it is the submission of the learned counsel for the appellants that the injured claimant Aravind was working as a power loom worker and earning a sum of Rs.10,000/- per month and to prove the same, the monthly salary list of the injured claimant was marked as Ex.P26 and the owner of the power loom was examined as

https://www.mhc.tn.gov.in/judis

WEB COPY

P.W.7. However, the injured claimant has not produced any document to prove the registration of workshop of P.W.7. There was lack of materials to prove the employment and income of the injured claimant . Therefore, the Tribunal has rightly fixed a sum of Rs.6,000/- as notional income and resultantly, the annual income of the injured claimant was arrived at a sum of Rs.72,000/- [6,000 x 12]. Considering the age of the injured claimant being 20 at the time of the accident, the Tribunal by applying multiplier "18", arrived at a sum of Rs.12,96,000/- [72,000 x 18 x 100%] under the head “Loss of earning”, which in my opinion is fair and reasonable and hence, the same is confirmed.

22. The further submission of the learned counsel for the appellant/claimant that the Tribunal, while calculating the amount under the head "Loss of earning", ought to have added Future prospects. However, in the case on hand, there is no concrete evidence to prove the employment and income of the injured claimant and hence, the Tribunal rightly not added future prospects.

23. The learned counsel for the appellant/claimant contended that the Tribunal while awarding the amount under the head "Medical

https://www.mhc.tn.gov.in/judis

WEB COPY

expenses" ought to have considered all the medical bills produced by the injured claimant and award a sum of Rs.10,54,773.67/-. On a perusal of the records, this Court finds that on account of the accident, the injured claimant sustained 100% disability and hence, he is not in a position to continue his avocation. To prove the same, the injured examined himself as P.W.3 and the Doctors were examined as P.W.5 and P.W.6 and Ex.P21/disability certificate was marked. In order to prove the medical claim, the injured claimant produced Ex.P19/medical bills as follows:

1 .The 1st Document Bills	-	Rs. 89,184.91
2. The 2nd Document Bills	-	Rs. 1,12,341.63
3. The 3rd Document Bills	-	Rs. 2,93,903.02
4. The 4th Document Bills	-	Rs. 5,15,614.28
5. The 5th Document Bills	-	Rs. 43,729.83
Total		Rs.10,54,773.67

Considering the nature of the injuries and also considering the disability, the sum of Rs.89,184.91/- awarded by the Tribunal under the head "Medical bills" appears to be on the lower side and as such, the same is hereby enhanced to Rs.10,54,773.67/-.

https://www.mhc.tn.gov.in/judis

WEB COPY

24. Further, the amounts awarded by the Tribunal under all the other heads are fair and reasonable, and hence, they are confirmed.

25. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

Sl. No	***Head under which the compensation is awarded***	***Amounts awarded by the Tribunal in Rs.***	***Amounts awarded by this Court in Rs.***
1.	Loss of earnings	12,96,000	12,96,000
2.	Transport to hospital	5,000	5,000
3.	Extra nourishment	10,000	10,000
4.	Attender charges	20,000	20,000
5.	Other medical expenses	89,184.91	10,54,773.67
6.	Compensation for pain and suffering	5,000	5,000
	Total	**14,25,184.91 (rounded off to) 14,25,185**	**23,90,773.67 (rounded off to) 23,90,774**
	Less 80 % contributory negligence of 2nd respondent	**11,40,148**	**19,12,619.2 (rounded off to) 19,12,619**
	Less 20% contributory negligence of 6th respondent	**2,85,037**	**4,78,154.8 (rounded off to) 4,78,155**

26 (i) The total compensation of Rs.**14,25,185**/- awarded by the Tribunal is hereby enhanced to Rs.**23,90,774**/-, which shall carry interest at

https://www.mhc.tn.gov.in/judis

WEB COPY

7.5% p.a. from the date of claim petition till the date of payment. The second respondent/United India Insurance Co., Ltd., is directed to deposit 80% of the amount ie. Rs.**19,12,619/-** awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. Further, the sixth respondent/Reliance General Insurance Co., Ltd., is directed to deposit 20% of the amount ie. Rs. **4,78,155/-** awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment.

(ii) On such deposit, the claimant is permitted to withdraw the entire amount. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. Thereafter, the sixth respondent Insurance Company is permitted to recover the above compensation amount from the fifth respondent / owner of the two wheeler bearing Registration No.TN 48 K 6388.

27. With the above observations and directions, these Civil

https://www.mhc.tn.gov.in/judis

WEB COPY

Miscellaneous Appeals are partly allowed. There shall be no order as to costs.

29.09.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ms

To

1.The Motor Accidents Claims Tribunal,
Principal District Judge,
Namakkal.

2.The Section Officer,
V.R.Section,
High Court, Madras.

https://www.mhc.tn.gov.in/judis

WEB COPY

P.VELMURUGAN, J.

ms

C.M.A.Nos.304 of 2018 and 1549 of 2018

29.09.2023

https://www.mhc.tn.gov.in/judis