



C.M.A.No.541 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	10.03.2023
Pronounced on	06.04.2023

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND**

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.541 of 2021

and C.M.P.No.3423 of 2021

M/s.National Insurance Co. Ltd.,

Represented by its Divisional Manager,

Balaji Tower, 2nd floor,

Ramakrishna Road, Salem-7

...Appellant

Vs.

1.Radha Thevannoor

2.Prathik Nayak

3.Mior. Parvathy Nayar

D/o Pradeep P.Thevannoor

Minor rep. By her mother, NF



Radha Thevannoor

4.Sarasamma Nayar

5. G.P.C.Nayar

6. Dharmalingam

7.Prathap Foundations for Education,
South Kalamassery
Cochin-682 033

8. Bharathi AXA General Insurance Co. Ltd.,
Rep. by its Branch Manager,
Pride Quadra, No.30, 3rd floor,
Ballery Road, Hebbal,
Bangalore-60 024.

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, appeal against the award and decree dated 13.01.2020 made in M.C.O.P.No.345 of 2015 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

For Appellant : M/s.S.Arun Kumar
For RR1 to R5& R7 : Mr.Krishna Ravindran



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For R8 : MR.M.Jayaraj

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JUDGMENT

(Judgment of the Court was delivered by K.GOVINDARAJAN THILAKAVADI,J.)

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the impugned award dated 13.01.2020 passed by the the Motor Accident Claims Tribunal, Special District Court, Krishnagiri, in M.C.O.P.No.345 of 2015.

2.Heard Mr.S.Arun Kumar, learned counsel for the appellant/Insurance Company and Mr.Krishna Ravindran, learned counsel for the respondents 1 to 5 and 7 and Mr.M.Jayaraj, learned counsel appearing for the 8th respondent.

3. The Insurance company has challenged the impugned award on the ground that the Tribunal has erroneously awarded compensation inspite of the fact that the accident has occurred due to rash and negligent driving of the deceased, without considering Ex.P.1 FIR registered against the deceased and



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without appreciating the evidence of R.W.1 to R.W.3 and without taking note of Exs.R.1 to R.5 in proper perspective. The further contention of the learned counsel for the appellant is that the Tribunal erred in relying on the evidence of P.W.3 despite the fact that, P.W.3 came to the spot only after hearing the noise, which is admitted by him during his cross examination. That being so, the claim petition is not maintainable as the deceased himself is a tortfeasor. It is further contented that the compensation awarded is excessive.

4.As seen from the impugned award, the Tribunal has given a categorical finding that only due to the rash and negligent of the 1st respondent/driver, the accident had happened and there is no fault on the part of the deceased.

5. The brief substance of the claim petition in M.C.O.P.No.345 of 2015 as follows:

On 16.11.2014, the deceased was proceeding to Bangalore in the car bearing Reg.No.KL 07-BU-52-52, belonging to the 3rd respondent and insured with the 4th respondent. At about 2.30 hours on 17.11.2014, the deceased was driving the car near Paiyoor fly over in Dharmapuri Krishnagiri road, very



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slowly and cautiously on the left side of the road. At that time a lorry bearing Reg.No.28-AB-9545 belonging to the 1st respondent insured with 2nd respondent was going in front of the car, on the right side of the road. The lorry was driven by its driver in a rash and negligent manner suddenly moved from right side to left side of the road. Due to this, the deceased who was driving the car in the left side had not anticipated and applied sudden break. Because of this sudden impact, the deceased lost his control dashed against the left back side of the lorry and again dashed against the left side of the dividing wall, in which the deceased sustained fatal injuries and died on the spot. However, the driver of the lorry gave a false complaint before the police to escape from criminal liability as if the deceased was at fault. On the basis of false complaint, the kaveripattinam police registered a case against the deceased in Crime No.614/2014 U/S 279, 304/A of IPC. At the time of the accident, the deceased was working as a Vice Chairman of SCMS Group of Educational Institution, Cochin and was getting monthly salary of Rs.1,65,000/-. The claimants are the wife, son, Daughter and parents of the deceased. The claimants have claimed compensation of Rs.10 Crores for the death of the deceased.

6.The claim of the claimants was resisted by the respondents stating in



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that the driver of the 1st respondent is not responsible for the accident. The accident took place only due to the negligence of the deceased.

7.After trial, the Tribunal has awarded a sum of Rs.1,92,90,804/- as compensation to the claimants with interest at the rate of 7.5% per annum from the date of petition till realization. Against which, the appellant/Insurance Company has preferred this Civil Miscellaneous Appeal.

8.During arguments, the learned counsel appearing for the appellant/Insurance Company would submit that, the appellant/Insurance Company, is not questioning the quantum of compensation. However, the question of contributory negligence has to be considered.

9.According to the learned counsel for the appellant/Insurance Company, the Tribunal committed a serious error in opining that the alleged accident occurred only due to the rash and negligent driving of the driver of the 1st respondent vehicle. The Tribunal failed to consider the oral and documentary evidence let in on the side of the 1st respondent with regard to the manner of accident. The Tribunal failed to note that the deceased also contributed to the said accident.



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10.The learned counsel appearing for the appellant would contend that in Ex.R.3 rough sketch the tyre mark of the car is shown from left side to the right side of the road which would indicate that the deceased lost his control and drove the car from left side to the right side and dashed against the lorry. The deceased should be blamed for not driving the car keeping sufficient distance. Therefore, the no fault can be attributed on lorry driver and car driver alone was negligent. To support his contention the learned counsel has relied upon the following decision cases reported in:

1.2018(1)TNMAC 749 (SC)

2.2006(2) TNMAC 472(DB)

3.2000 ACJ 168

11.On the other hand, the learned counsel appearing for the respondent/claimants would contend that closure of criminal case would not preclude Tribunal from adjudication negligence aspect and the Tribunal cannot reject claim petition solely on the basis of police report a strict proof of accident caused by a particular vehicle in a particular manner is not possible for the claimants and it can be established only by preponderance of probability. Since



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the accident was caused only due to the rash and negligent of the lorry driver there cannot be any finding of contributory negligence on part of the deceased

12. Therefore, the learned counsel appearing for the respondents/claimants would contend that the Tribunal was right in fixing the negligence on the part of the driver of the lorry and therefore, calls for no interference. To support his contention, he has relied upon the following decision cases reported in

1. 2013 1 TNMAC 530

2. 2015 (1) TNMAC 52(SC)

3. 2009 ACJ 1725

4. 2014 (2) TNMAC 608(SC)

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

So far as the issue of "Contributory negligence is concerned, the Apex Court in Usha Rajkhowa and Ors Vs. Paramount Industries and Ors. [Civil Appeal No.1088 of 1009 (arising out of SLP (C) No.16647 of 2008)] discussed the issue of contributory negligence noticing, inter alia, earlier decisions on the same topic. It was held that:

"10. The question of contributory negligence on the part of the driver in case of collision was considered by this



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*Court in **Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak and Ors.** Reported in (2002) 6 SCC 455.*

That was also a case of collusion in between a Car and a truck. It was observed in para 8:

'The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as 'negligence'. Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributor negligence", it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an author of his own wrong.

14. Admittedly the accident occurred at 2.30.am in 17.11.2014 when the deceased was travelling in his car. According to the claimants the deceased was proceeding in his car from South to North direction on the right side of the road and the lorry bearing Registration No.TN-29-AB-1945 belonging to the 1st respondent was going in the front right side of the road. The lorry was driven by its driver in a rash and negligent manner suddenly moved from right side to the left side of the road without showing any signal. Due to the sudden impact, the deceased who was driving the car on the left side of the road applied sudden



break which resulted in dashing against the left back side of the lorry and again dashed against the left side dividing wall, in which the deceased sustained fatal injuries and died on the spot. On the other hand, the second respondent would contend that the deceased drove the vehicle in a rash and negligent manner lost control and dashed against the lorry. Hence, the deceased was responsible for the accident and only because of that, the FIR was registered against him. It would clearly show that the deceased himself was the tortfeasor. Hence, the police filed the final report by closing the case as charge abated. The factum that the car dashed against the lorry from behind would itself prove that the deceased was at fault.

15.The admitted facts are that, the Ex.P.1-FIR was registered only against the deceased. The alleged accident occurred at 2.30 a.m and the claimants were residing nearly 500 Km away from the occurrence place. Hence, the 1st claimant P.W.1 cannot speak about the manner of accident. However, the claimants have examined P.W.3 as eyewitness to the alleged occurrence. P.W.3 in his chief examination has stated that he is owning a mechanic shop near the occurrence place and the alleged accident took place only due to the rash and negligent act of the lorry driver and the lorry driver ran away from the occurrence place.



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However, in the cross examination P.W.3 has stated that only after hearing the noise he came running to the scene of occurrence. But in his further cross examination by R2, he has confirmed that he saw the drive of the lorry driving the vehicle in a rash and negligent manner. Therefore, though P.W.3 is not competent to speak about the manner of accident, his evidence with regard to the rash and negligent of the lorry drive cannot be disbelieved. There is no contra evidence on the side of the respondent that PW.3 is not owning a mechanic shop near the occurrence place and his evidence cannot be believed with regard to the rash and negligent driving of the lorry driver.

16.It is pertinent to note that the complaint was lodged only by the driver of the lorry after some delay. Therefore, there is every possibility for the driver to give a false complaint in order to escape from criminal liability. Based on the alleged FIR, the police would have prepared all the documents to suit the complaint. Moreover, the police who had investigated the case was not examined. Therefore, the fact that the criminal case was closed as charge abated will not exonerate the appellant/Company from their liability and also the plea taken by the appellant/company that the deceased was a tortfeaser also cannot be accepted when there is no sufficient evidence to prove that the accident was



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due to the negligence of the deceased. In this case, though there is no direct evidence to show negligence on part of the deceased or on part of the lorry driver, it is settled principle that the driver of heavy vehicle should take sufficient caution while driving such vehicle. P.W.3 has clearly deposed that the driver of the lorry drove the vehicle in a rash and negligent manner. There is no reason to disbelieve his evidence. At the same time, it cannot be said that, the deceased has not contributed to the accident. The motor vehicle's Inspector Report indicates that the back side the lorry was damaged. It may be due to the negligence of the car driver or due to the negligence of the lorry driver. According to the claimants, the lorry driver suddenly moved on to the right side of the road due to which the deceased dashed against the lorry. Where as, the 2nd respondent contention is that the deceased lost his control moved from the left side to the right side and dashed against the lorry. However, there is no direct evidence to substantiate the contention of the claimants and the 2nd respondent. The decision cases relied by the learned counsel for the appellant are in respect of parked vehicle. Therefore, the principle laid down in the referred cases are not applicable to the present case. At the most, it can be construed only as a case of contributory negligence.



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17. On perusal of the materials placed before us, we find that there was contributory negligence on the part of the deceased. Hence, it can be viewed only as a contributory negligence case. Therefore, the principle of 50:50 in cases of contributory negligence can be applied to the present case. Accordingly, the claimants are entitled to only 50% of the total amount of loss of dependency.

18. The next contention of the learned counsel appearing for the appellant is that the Tribunal erred in deducting more than one third towards personal expenses, since the respondents 1, 4 and 5 are having individual earnings and therefore, they cannot be construed as dependents upon the deceased. It is an admitted fact that the 1st claimant is the wife of the deceased the 2nd and 3rd claimants are son and daughter of the deceased and 4th and 5th claimants are parents of the deceased. It is also not in dispute that the trust relied upon by the claimants is a registered Trust. Though the learned counsel appearing for the appellant/Insurance Company vehemently contended that respondents 4 and 5 having independent income and they were not depending on the income of the deceased there is no proof to establish the same. Even assuming R4 and R5 are having independent income, as parents, they would be depending on the



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deceased for certain extent. However, considering the fact that the 4th and 5th respondents are the parents of the deceased, they are also entitled for compensation irrespective of the fact that they are holding some post in the Trust. Likewise, R2 and R3 children of the deceased are also entitled for compensation under the head parental consortium. Hence, this Court finds it appropriate to award compensation under the head Filial consortium, parental consortium to the respondents 2 to 5 of Rs.1,60,000/-. Accordingly, the compensation awarded by the Tribunal under the head love and affection awarded by the Tribunal at Rs.1,50,000/- is cancelled. The Tribunal has fixed the monthly income of the deceased at Rs.1,65,000/- and on appreciating the evidences of P.W.1 and P.W.2 and upon perusing Ex.P.9 and Ex.P.32 respectively after deducting income tax the Tribunal has fixed the monthly income of the deceased at Rs.1,29,236/-after income tax deduction. The same is not objected by the learned counsel appearing for the appellant/Insurance Company.

19.Hence, fixing the income of the deceased as Rs.1,29,236/-, deducting 1/4 towards personal expenses of the deceased as Rs.96,927/- (Rs.1,29,236-32,309), enhancement for future prospects 25% as Rs.1,21,158.75/- (96,927+24,231.75), applying multiplier 13 and compounding it annual, the



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compensation awarded by the Tribunal towards loss of dependency is modified to Rs.1,89,00,765/- $[(1,29,236 \times 1/4) + 25\% \times 12 \times 13]$. From which a further deduction 50% shall be made by way of contributory negligence on the part of the deceased. Thus, the claimants are entitled to Rs. 94,50,382.5/- for loss of dependency.

20.The claimants are entitled for compensation under various heads as follows:

<i>SL.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court(Rs)</i>	<i>Award confirmed or enhanced or granted</i>
1.	Loss of dependency	1,89,00,804/-	94,50,382.25	Reduced
2.	Loss of Consortium (R1)	80,000/-	40,000	Reduced
3.	Loss of Estate	1,00,000/-	15,000/-	Confirmed
4.	Funeral Expenses	20,000/-	20,000	Confirmed
5.	Filial & parental Consortium (R2 to 5)	-	1,60,000	Granted
6.	Towards love and affection	1,60,000/-	-	Denied
7.	Towards Travelling Expenses	40,000/-	40,000	Confirmed
	Total	1,92,90,804/-	97,25,382.25/-	Reduced by 95,65,421.75/-



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21. In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.1,92,90,804/- awarded by the Tribunal is reduced to Rs.97,25,382.25/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

22. The appellant/Insurance Company is directed to deposit the above said sum as modified by this Court along with interest, within a period of twelve weeks from the date of receipt of a copy of this judgment if not already deposited. On such deposit, the respondents/claimants 1, 2, 4 & 5 are permitted to withdraw the compensation as modified by this Court along with interest, after adjusting the amount, if any, already withdrawn, as apportioned by the Tribunal. As far as the 3rd respondent is concerned, the amount apportioned to the share of the 3rd respondent/minor is directed to be deposited in any one of the Nationalized bank under the auto renewal clause in Ernakulam District, Kerala, till she attains majority as per the ratio of apportionment ordered by the Tribunal, through NEFT/RTGS within a period of 12 weeks from the date of receipt of a copy of this order. The mother of the minor is permitted to withdraw the accrued interest once in six months for the benefit of the minor. If any excess amount paid by the Insurance Company to the credit of M.C.O.P.No.345



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of 2015 on the file of the Motor Accident Claims Tribunal (Special District Court), Krishnagiri. The appellant/ Insurance Company is permitted to withdraw the same by the filing necessary application. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.,J.) (K.G.T.,J.)
06.04.2023

vsn

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

To:-

The Motor Accident Claims Tribunal,
Special District Court, Krishnagiri.



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D.KRISHNAKUMAR J.
and
K.GOVINDARAJAN THILAKAVADI, J.

VSN

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