



C.M.A.(MD).No.569 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.569 of 2022
and
C.M.P.(MD).No.10210 of 2022

The Divisional Manager,
United India Insurance Company Limited,
Union Bank of India Upstairs,
Madurai Road,
Virudhunagar.

... Appellant

-Vs-

1.Muthu Ramalingam
2.M.Muthumari
3.A.Pothu Raja
4.M/s.New Hindustan Steels,
No.681/2, Gnanagiri Road,
Sivakasi 626 123.
5.The Divisional Manager,
New India Assurance Company Limited,
No.105/1, 1st Floor,
Madurai Road,
Virudhunagar.

... Respondents

PRAYER: The Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.01.2022 passed in M.C.O.P.No.103 of 2018 on the file of the Motor Accident Claims



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WEB COURT Tribunal and Additional District Court, Virudhunagar.

For Appellant : Mr.I.Suthakaran
For R1 & R2 : Mr.K.R.Shivashankari
For R5 : Mr.D.Malaichamy

J U D G M E N T

Challenging the award passed by the Motor Accident Claims Tribunal and Additional District Court, Virudhunagar in M.C.O.P.No.103 of 2018, dated 20.01.2022, the present appeal has been filed by the Insurance Company.

2. The brief facts leading to the filing of this appeal are as follows:

The deceased was aged about 19 years and a student. On 07.04.2018, at about 1.00 p.m., the deceased was riding a motorcycle bearing Registration No.TN 67 AP 0414 from the College along with his friend / P.W.2 as a pillion rider and while overtaking a lorry bearing Registration No.TN 59 J 4225, the lorry dashed against the two wheeler. As a result, the deceased succumbed to injuries. It is the case of the first respondent before the Tribunal that only the rider of the motorcycle rode the bike in a rash and negligent manner and overtook the lorry. In the process, he fell down in front of the lorry. As a result, the accident



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took place. The second respondent also taken the same defence. The fourth respondent has also taken a stand that the accident was occurred only due to the negligent riding of the motorcycle by the deceased and he was not possessed valid driving licence.

3. Before the Tribunal, on the side of the petitioners, P.Ws.1 to 3 were examined and Exs.P1 to P16 were marked and on the side of the respondents, R.Ws.1 and 2 were examined and Exs.R1 and R2 were marked.

4. Based on the materials, the Tribunal has held that only the driver of the lorry was negligent in driving the lorry and caused the accident and awarded a sum of Rs.16,92,800/- in the following manner:

Description	Amount
Loss of dependency	Rs.16,12,800/-
Loss of love and affection	Rs.50,000/-
Loss of estate	Rs.15,000/-
For funeral expenses	Rs.15,000/-
Total	Rs.16,92,800/-



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Challenging the same, the present appeal has been filed by the Insurance Company questioning the liability.

5. The learned counsel appearing for the appellant/Insurance Company mainly contended that the F.I.R. clearly indicate that only the motorcyclist rode the bike in a rash and negligent manner and after taking overtake, he fell in front of the lorry, whereas proceeded as if F.I.R. has been filed against the lorry driver, which is not correct. The sketch, F.I.R. and the evidence of P.W.2 clearly shows that there is a contributory negligence, which has not been taken note of by the Tribunal. Hence, he submitted that the Insurance Company cannot be fastened with the liability.

6. The learned counsel appearing for the fifth respondent would submit that after overtaking, the lorry hit the bike and the driver of the lorry has not maintained the reasonable distance. Therefore, the Tribunal has fixed the negligence on the part of the driver of the lorry, which does not require any interference. As far as the quantum of compensation is concerned, it is the contention that the Tribunal has fixed only a sum of Rs.8,000/- as notional



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income of the deceased. The deceased was the student and aged about 19 years and pursuing the diploma course. Hence, the quantum of compensation has to be enhanced.

7. In the light of the above submissions, now the points for consideration in this appeal are

(i) whether the Tribunal is right in fixing the negligence on the part of the driver of the lorry, despite the fact that the evidence proving otherwise?

(ii) whether the quantum fixed by the Tribunal is just and reasonable?

8. On perusal of the entire evidence, the evidence of P.W.2, who is eyewitness to the occurrence and seated as a pillion rider, clearly indicate that the motorcyclist overtook the lorry proceeding in front of the motorcycle and thereafter, the motorcycle skidded as a result deceased fell down and the lorry immediately run over the motorcycle. As a result, he succumbed to injuries. The evidence of the eyewitness itself indicate the process of overtaking the lorry, deceased fell down due to the skidding of the motorcycle in the main road. The F.I.R. is also filed with the same facts. The rough sketch filed is also clearly

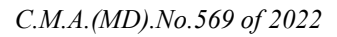


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indicate that the motorcyclist after overtaking fell due to skidding of the vehicle on the road. As a result, the lorry coming in the same same direction run over it. This fact clearly indicate that the deceased drove the motorcycle in a rash and negligent manner and while overtaking the lorry, he fell down and invited the accident. Though the lorry driver ought to have avoided the accident by applying sudeen break, the fact remains that the motorcycle fell immediately after overtaking. Therefore, this Court is of the view that though the negligence is also on the part of the driver of the lorry not applying the break immediately, entire negligence cannot be attributed against the driver of the lorry since the motorcyclist also contributed the negligence in riding the motorcycle in a rash and negligent manner. Further, he did not possess valid driving licence at the relevant point of time. All these facts clearly indicate that some amount of contributory negligence also to be attributed against the deceased.

9. In such a view of the matter, this Court is inclined to fix 50% of the contributory negligence on the part of the deceased and the remaining 50% on the part of the driver of the lorry. Accordingly, the first point is answered.



11. In such a view of the matter, the notional income is fixed as Rs.12,000/- and added 40% towards future prospects and the same come around Rs.16,800/- (Rs.12,000/- + Rs.4,800/- = Rs.16,800/-). The deceased is a bachelor and hence, 50% deducted towards personal expenses and the monthly income would be Rs. 8,400/- (Rs.16,800/- - 50%). The total loss of dependency comes to Rs. 18,14,400/- (Rs.8,400/- x 12 x 18 = Rs.18,14,400/-). Further, this Court awarded a sum of Rs.80,000/- towards love and affection. In respect of loss of estate and funeral expenses, the amount awarded by the Tribunal is confirmed. The modified award amount is as follows:



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Description	Amount
Loss of dependency	Rs.18,14,400/-
Loss of love and affection	Rs.80,000/-
Loss of estate	Rs.15,000/-
For funeral expenses	Rs.15,000/-
Total	Rs.19,24,400/-

In the award amount, the Insurance Company shall pay only 50% of the amount ie., Rs.9,26,200/- within a period of six weeks from the date of receipt of a copy of this order with interest at the rate of 7.5% per annum. On such deposit, the respondents 1 and 2 are entitled to a sum of Rs.4,81,100/- each.

12. It is also to be noted that this Court come across such accident very frequently and unfortunate the students are met with an accident. The students pursuing school education as well as the college education were allowed to ride the motorcycle, without even valid driving licence and the entire such accident was happening because of no control whatsoever shown by the parents. It is the duty of the parents not to allow the students, who attained majority and did not possess valid driving licence, to ride the motorcycle. But the society particularly in rural areas, the parents are not bother about this aspect and allowed the



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children to ride the motorcycle and allowed the students to go to the school in a motorcycle even without licence. Such action is ultimately lead to the loss of life and loss of youth and it will seriously affects the society also. Therefore, the parents should be very careful and to give importance to the children and not to allow the children to ride the motorcycle without valid licence.

13. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

28.06.2023

akv

To

- 1.The Motor Accident Claims Tribunal and
Additional District Court,
Virudhunagar.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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N.SATHISH KUMAR,J.

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