



C.M.A.(MD)No.1036 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 08.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.1036 of 2021
and
C.M.P.(MD)No.9801 of 2021

The Branch Manager,
The New India Assurance Company Limited.,
C.M.T.S.Bavan, 70 Feet Road,
Ellis Nagar, Madurai Town,
Madurai District.

...Appellant /2nd Respondent

Vs.

1.Chandrasekaran
2.Indumathi
3.Rooba

...Respondents 1-3/Petitioners

4.Alexpandi

...4th Respondent/1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree in M.C.O.P.No.36 of 2018 dated 30.06.2021 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Sivagangai.

For Appellant	: Mr.J.S.Murali
For R1 to R3	: Mr.K.Kumaravel
For R4	: Mr.A.Vignesh



C.M.A.(MD)No.1036 of 2021

JUDGMENT

WEB COPY

The present Civil Miscellaneous Appeal is filed against the quantum and negligence fixed on the Insurance Company by the Motor Accident Claims Tribunal Additional District Court, Sivagangai in M.C.O.P.No.36 of 2018, dated 30.06.2021.

2.For the sake of convenience, the parties are referred to herein as per their rank before the trial Court.

3.The brief facts leading to the filing of the claim petition are as follows:

On 08.02.2017 at about 07.45 a.m., when the deceased was proceeding to his college in his two wheeler bearing Registration No.TN-65-AC-6086 towards east to west in Madurai to Ramseswaram Main Road, the first respondent's Eicher vehicle bearing Registration No.TN-58-AV-3551, which was coming in the opposite direction in a rash and negligent manner without observing the traffic rules, dashed against the two wheeler of the deceased. As a result, the deceased succumbed to injuries on the way to hospital. The deceased was aged about 17



C.M.A.(MD)No.1036 of 2021

years and he was studying first year Diploma in Electrical and Communication Engineering and he would have easily earned a sum of Rs.50,000/- per month. Hence, the claimants, who are the parents and sister of the deceased have filed the claim petition seeking compensation.

4.The second respondent before the Tribunal took a stand that the deceased drove his two wheeler in a high speed without observing the traffic rules. Noticing the same, the first respondent applied break. However, the deceased by negligence dashed against the vehicle and fell on the road.

5.Before the Tribunal, on the side of the claimants, one witness was examined as P.W.1 and Ex.P1 to Ex.P7 were marked. On the side of the respondents, two witnesses were examined as R.W.1 and R.W.2 and Ex.R1 to Ex.R6 were marked.

6.The Tribunal on considering the evidence of the eyewitness, viz., P.W.1 and also the final report filed against the driver of the first respondent, had found that the first respondent was negligent in driving the vehicle and awarded the compensation as follows:



C.M.A.(MD)No.1036 of 2021

S.No.	Particulars	Amount
1.	Loss of dependency	Rs.18,14,400/-
2.	Loss of Estate	Rs. 16,500/-
3.	Loss of Filial Consortium	Rs. 88,000/-
4.	Funeral Expenses	Rs. 16,500/-
	Total	Rs.19,35,400/-

Since the deceased minor boy had driven the two wheeler, the Tribunal had deducted 20% of the award amount towards contributory negligence on the part of the deceased. Further, the Tribunal had directed the Insurance Company to pay the compensation first and then recover the same from the first respondent/owner of the vehicle. Challenging the same, the Insurance Company has filed the present appeal.

7.The only contention raised by the learned counsel for the appellant before this court is that the minor boy drove the two wheeler. Therefore, fixation of 80% negligence on the part of the first respondent/driver of the Eicher is not proper. That apart, since the driver of the offending vehicle did not possess any valid driving license at the relevant point of time, pay and recovery could not be ordered and the said finding of the Tribunal has to be interfered with.



C.M.A.(MD)No.1036 of 2021

8.The learned counsel for the respondents would submit that merely because the two wheeler was driven by a minor boy, the negligence cannot be wholly fixed on him. The evidence on record clearly establishes the fact that only the driver of the Eicher drove the vehicle in a rash and negligent manner. Hence, the compensation awarded by the Tribunal does not warrant any interference.

9.In view of the above submissions, now the points arise for consideration in this appeal are:

(a)whether the Tribunal is right in fixing the negligence at the ration of 80%:20%? and

(b)whether the quantum fixed by the Tribunal is proper?

10.I have heard the learned counsel appearing on either side and perused the materials placed on record.

11.After considering the entire materials available on record, the Tribunal had found that only the offending vehicle was driven in a rash and negligent manner and hit against the motorcycle. However, the Tribunal had deducted 20% of the compensation on the ground that the minor boy drove the two



C.M.A.(MD)No.1036 of 2021

wheeler. This Court is of the view that merely because of the vehicle was driven by a minor boy, contributory negligence cannot be inferred. To establish contributory negligence, there must be some evidence to show that the minor had driven the vehicle in a rash and negligent manner. Absolutely, no such evidence is available on record. Further, the offending vehicle is a heavy vehicle and it has a clear view of the road. If the driver of the offending vehicle maintained a reasonable speed limit, the accident would not have been occurred. Hence, the finding of the Tribunal that the driver of the offending vehicle was rash and negligent cannot be found fault. Similarly, deduction of 20% of the compensation towards contributory negligence fixed on the part of the deceased minor boy, who had driven the two wheeler in violation of the traffic rules, cannot be found fault.

12.As far as the income of the deceased is concerned, it is the contention of the learned counsel for the appellant that the income of the deceased fixed by the Tribunal has to be reduced, since the deceased was a minor and he was only a student at the relevant point of time. I do not find any substance in the contention of the learned counsel for the appellant. It is an admitted fact that the deceased was aged about 17 years and he was pursuing his first year Diploma in Engineering. If he had not met with the unfortunate accident, he could have



C.M.A.(MD)No.1036 of 2021

completed his education and he would have earned more than the amount fixed by the Tribunal. Therefore, merely because the deceased had not attained majority at the time of accident, it cannot be held that there cannot be any income. Considering the educational qualification of the deceased, the Tribunal had fixed the notional income of the deceased at Rs.12,000/- and the same cannot be found fault.

13. Admittedly, the driver of the offending vehicle did not possess valid driving license. This was also established by the Insurance Company by placing records. Taking note of the above, the Tribunal had rightly directed the Insurance Company to pay the compensation amount first and then recover the same from the owner of the vehicle. Though the learned counsel for the appellant contended that there is a violation of policy condition and the Insurance Company cannot be made liable for such violation, this Court is of the view that such contention cannot be countenanced. Merely on that ground, the Insurance Company cannot be exonerated totally. This Court has repeatedly held that when the claim petition is filed under the Motor Vehicles Act, the Insurance Company shall be directed to pay and recover the compensation amount from the owner of the vehicle. In such view of the matter, the award passed by the Tribunal directing the Insurance



C.M.A.(MD)No.1036 of 2021

Company to pay and recover the compensation is well reasonable and the same does not warrant any interference.

14. Accordingly, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal is confirmed.

15. The Insurance Company is directed to deposit the entire compensation amount awarded by the Tribunal with interest and costs at the first instance to the credit of M.C.O.P.No.36 of 2018, on the file of the Motor Accident Claims Tribunal /Additional District Court, Sivagangai within a period of six weeks from the date of receipt of a copy of this judgment, less the amount, if any already deposited and thereafter, the appellant / Insurance Company is entitled to recover the same from the owner of the vehicle. On such deposit, the claimants are permitted to withdraw the amount as apportioned by the Tribunal, less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

08.06.2023

NCC : Yes/No
Index : Yes/No
ta

8/10



C.M.A.(MD)No.1036 of 2021

To
WEB COPY

1.The Motor Accident Claims Tribunal /
Additional District Court, Sivagangai.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.1036 of 2021

N.SATHISH KUMAR, J.

ta

C.M.A.(MD)No.1036 of 2021

08.06.2023