



C.M.A.(MD)No.168 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.168 of 2023

and

C.M.P.(MD)Nos.1668 and 6647 of 2023

National Insurance Company Limited,
Through its Divisional Manager,
First Floor, Anguvilas Building,
Number 112 North Car Street,
Nagercoil.

...Appellant/2nd Respondent

Vs.

1.Leela
2.Johnson
3.Subin
4.George Clyment

...Respondents/Petitioners

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award made in M.C.O.P.No.1550 of 2018 dated 30.06.2022 on the file of the Motor Accident Claims Tribunal, Special Sub Court dealing with MCOP Cases, Tirunelveli.

For Appellant	: Mr.J.S.Murali
For R1 to R3	: Mr.T.Selvakumaran
For R4	: No Appearance



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JUDGMENT

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Challenging the award passed by the Tribunal directing the appellant herein to pay the compensation amount of a sum of Rs.11,57,000/-, the appeal has been filed by the Insurance Company on the ground of liability and also negligence fixed by the Tribunal.

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 this Civil Miscellaneous Appeal, are as follows:-

(i)The deceased was aged about 21 years. He was travelling as a pillion rider in a motorcycle bearing Registration No.TN-75-8096 on 26.07.2008 at about 6.00 p.m.. When the motorcycle was nearing Tholayavattam Cashew nuts factory, the car bearing Registration No.TN-74-AT-1630 belonging to the first respondent insured with the second respondent driven in a rash and negligent manner, dashed against the motorcycle. As a result, the deceased fell down on the road and succumbed to injuries. The case was registered against the rider of the motorcycle, based on the complaint given by the first respondent.



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(ii)First petitioner is the mother of the deceased. The second petitioner is the father and third petitioner is the brother of the deceased. The deceased was working as Fisherman and he was earning a sum of Rs.15,000/- per month. Hence, the legal heirs of the deceased filed the claim petition seeking compensation.

(iii)The first respondent filed counter affidavit denying the rash and negligent driving fixed on the part of the driver of the car. He contended that only the rider of the motorcycle drove the vehicle in a rash and negligent manner and lost his control. Hence, the deceased fell down on the road.

(iv)The Insurance Company also contended that the accident took place due to the rash and negligent driving of the rider of the motorcycle. FIR was also filed against the rider of the motorcycle. Further, the rider of the motorcycle had no valid driving license at the time of accident and the vehicle was also seized for not having valid insurance coverage. Hence, opposed the claim petition.



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4.Before the Tribunal, on the side of the claimants P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P7 were marked. On the side of the respondents R.W.1 to R.W.3 were examined and Ex.R1 to Ex.R9 were marked.

5.After considering the evidence and documents, the Tribunal had fixed the liability on the part of the driver of the car mainly on the ground that the accident had happened in a busy area, therefore, the car should have been driving in a cautious manner and fixed the compensation as follows:

S.No.	Heads	Amount
1.	Loss of Income	Rs.10,80,000/-
2.	Loss of filial consortium	Rs. 44,000/-
3.	Loss of Estate	Rs. 16,500/-
4.	Funeral Expenses	Rs. 16,500/-
	Total	Rs.11,57,000/-

Challenging the same, the present Civil Miscellaneous Appeal is filed by the Insurance Company.



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6.The learned counsel for the appellant submitted that the rider of the motorcycle did not have valid license at the relevant point and the said fact has been established through R.W.1. Besides, FIR was also registered against the rider of the motorcycle and the investigation was proceeded against the rider of the motorcycle. The motorcycle was also seized by the authorities for not possessing valid license and also insurance. However, the Tribunal in the absence of any evidence to show the rash and negligent driving on the part of the driver of the car, had fixed the liability on the part of the driver of the car and same has to be set aside.

7.The learned counsel for the respondents would submit that the Tribunal considering the evidence had rightly fixed the liability on the part of the driver of the car. He further submitted that the Tribunal had not awarded any amount towards future prospects. Hence, he seeks enhancement of compensation.

8.In view of the above submissions, now the point arise for consideration in this appeal is:

Whether the Tribunal is right in fixing the liability on the part of the driver of the offending car without any evidence to prove the same?



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9.Heard the learned counsel appearing on either side and perused the entire evidence available on record.

10.Perusal of the evidence adduced by the appellant as well as the respondents herein shows that P.W.2, who is stated to be the eye witness of the accident, had only seen the place of occurrence and he had not witnessed the accident directly. The evidence of P.W.1 clearly shows that the rider of the motorcycle did not have any valid driving license at the relevant point of time and the motorcycle was also not validly insured. Hence, the motorcycle was also seized by the authorities concerned. These facts have not been considered by the Tribunal. In the absence of any evidence to establish the rash and negligent driving on the part of the driver of the car, the Tribunal had simply fixed the liability on the insurer of the first respondent vehicle on the ground that the car should have been driven in a careful manner in the busy area, in which the accident had taken place.

11.Admittedly, the accident had taken place in the busy area. Merely because, the accident had taken place in a busy area, the entire negligence cannot



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be fixed on the driver of the car, unless the negligence is specifically established on record. At the same time, the car being a heavy vehicle and having the clear view of the road, the driver of the car ought to have taken some care. Therefore, it cannot be stated that there was no negligence on the part of the driver of the car at all. On certain aspects, the doctrine of *res ipsa loquitur* also comes into play. Driving the car endangering the human lives in a busy area also amounts to negligence.

12.In such view of the matter, this Court is of the view that the car driver cannot be allowed to escape merely on the the ground that the eye witness has not supported the case of the claimants. Accordingly, this Court fixes the negligence on the part of the car driver at 70%. Since the rider of the motorcycle did not have valid driving license at the time of accident and there was no valid insurance coverage to the motorcycle, this Court fixes 30% negligence on the part of the rider of the motorcycle.

13.Admittedly, the deceased was aged about 21 years and he was a Fisherman by profession. The Tribunal had rightly fixed the monthly income of the deceased at Rs.10,000/- and the same does not warrant any interference.



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However, the Tribunal had not awarded any future prospects as required under law. Hence, considering the age of the deceased, 40% (Rs.4,000/-) future prospects is added. Since the deceased is a bachelor, 50% of his income is deducted towards his personal expenses. Accordingly, the monthly income of the deceased is fixed at Rs.7,000/- (Rupees Seven Thousand only). By applying the relevant multiplier '18', the loss of income of the deceased would come around Rs.15,12,000/- (Rupees Fifteen Lakhs and Twelve Thousand only).

14.Further, the Tribunal had not awarded compensation towards loss of love and affection to the second and third claimants, who are the father and brother of the deceased. Hence, this Court awards a sum of Rs.40,000/- each (Rupees Forty Thousand only) to the second and third claimants towards loss of love and affection. In the result, the claimants are entitled to the following compensation:

S.No.	Heads	Amount
1.	Loss of Income	Rs.15,12,000/-
2.	Loss of filial consortium	Rs. 44,000/-
3.	Loss of love and affection to the third and fourth claimants	Rs. 80,000/-
4.	Loss of Estate	Rs. 16,500/-



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5.	Funeral Expenses	Rs. 16,500/-
	Total	Rs.16,69,000/-

15. Accordingly, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal is enhanced as stated above. Since the contributory negligence is fixed on the part of the deceased, 30% of amount (i.e., Rs. 5,00,700/-) from the total compensation is deducted. Accordingly, the claimant is entitled to the compensation of Rs. 11,68,300/- ($Rs. 16,69,000 - Rs. 5,00,700 = Rs. 11,68,300/-$) (Rupees Eleven Lakhs Sixty Eight Thousand and Three Hundred only).

12. The Insurance company is directed to deposit the entire compensation as modified by this Court i.e., Rs. 11,68,300/- (Rupees Eleven Lakhs Sixty Eight Thousand and Three Hundred only) with interest at the rate of 7.5% from the date of petition till the date of realization to the credit of M.C.O.P.No.1550 of 2018, on the file of the Motor Accident Claims Tribunal/Special Sub Court, Tirunelveli within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the first claimant is permitted to withdraw a sum of Rs. 8,14,300/- (Rupees Eight Lakhs Fourteen



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Thousand and Three Hundred only) and the second and third claimants are permitted to withdraw a sum of Rs.1,77,000/- each (Rupees One Lakh Seventy Seven Thousand only), less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

22.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

- 1.The Motor Accident Claims Tribunal/
Special Sub Court, Tirunelveli.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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