



C.M.A. (MD)No.1198 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.1198 of 2022

and

C.M.P.(MD) No.12221 of 2022

Reliance General Insurance Co. Ltd.,
Through its Divisional Manager,
Having Office at Sri Meenakshi Plaza,
1st Floor, Plot No.Hig 55,
80 Feet Road, Anna Nagar,
Madurai – 625 020.

... Appellant/ 2nd Respondent

Vs.

1.Lakshmi
2.Nachiarammal
3.Ramanathan

... Respondents 1 to 3/
Petitioners 1 to 4

4.Marimuthu

... Respondents No.4/
1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 24.06.2022 made in M.C.O.P.No.2094 of 2016 on the file of the Motor Accident Claims Tribunal, District and Sessions Judge, Communal Clash Cases Court, Madurai.



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For Appellant : Mrs.K.R.Shivashankari
For Respondents : Mr.P.F.Ferlin Castro for R1 to R3
No Appearance for R4

JUDGMENT

Challenging the award passed by the Motor Accident Claims Tribunal, District and Sessions Judge, Communal Clash Cases Court, Madurai, in M.C.O.P.No.2094 of 2016, dated 24.06.2022, the appellant – Insurance Company has filed this Civil Miscellaneous Appeal.

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:-

The deceased Manikandan, who is the husband of the first petitioner and son of the petitioners 2 and 3 in the claim petition, was riding his motor cycle bearing Registration No.TN-58-AF-1139 on 09.11.2015 at 9.00 p.m., on K.K.Nagar Main Road, in front of Milliniam Mall, from North to South observing the rules and regulation of the road. At that time, an Auto bearing Registration No.TN-59-AM-6670, was proceeding in the same direction i.e., North to South



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with high speed, without indicating any signal and the driver of the Auto suddenly applied the break and the deceased tried to turn his bike, despite the same the bike hit the left back side of the Auto. As a result, the deceased fell down from the bike, sustained head injuries and succumbed to injuries. He was practicing as Junior Advocate at the relevant point of time and he was earning a sum of Rs. 25,000/- per month. Hence, the petitioners have filed the claim petition.

4. It is the case of the 2nd respondent -Insurance Company before the Tribunal that the deceased was in a drunken stage and riding his Motor Cycle in a rash and negligent manner and dashed against the Auto and the entire accident was occurred as a result of the rash and negligent driving of the deceased. Further, it is the case of the 2nd respondent – Insurance company that the compensation amount claimed by the petitioners is too high.

5. To substantiate the case before the Tribunal, on the side of the petitioners, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P10 were marked and on the side of the 2nd respondent - Insurance Company, R.W.1 to R.W.3 were examined and Ex.R1 was marked.



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6. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, has fixed the following compensation with interest at the rate of 7.5% per annum:

S. No	Heads	Amount
1.	Loss of Pecuniary Benefits	Rs.21,50,400/-
2.	Loss of Estate	Rs. 15,000/-
3.	Funeral expenses	Rs. 15,000/-
4.	Consortium	Rs. 1,20,000/-
	Total	Rs.23,00,400/-

The Tribunal, in the total award amount, deducted 25% of the amount towards contributory negligence on the part of the deceased, for not wearing the helmet and awarded a sum of Rs.17,25,300/- as compensation to the petitioners. Challenging the same, the present Civil Miscellaneous Appeal has been filed by the 2nd respondent – Insurance Company.

7. Though several grounds have been raised in the appeal, the learned counsel appearing for the 2nd respondent – Insurance Company has mainly focused her argument that the deceased has contributed for accident and the evidences of



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P.W.2 and R.W.2 clearly show that the deceased hit the Auto, which was proceeding head of the Motor Cycle in a rash and negligent manner and as a result, he fell down and sustained head injuries. The Tribunal without considering the evidence in this regard properly, has fixed the negligence as 75% on the 2nd respondent - Insurance Company. She further submitted that the Tribunal fixed the notional income of the deceased at Rs.12,000/- per month, which is highly excessive and without any basis and therefore, the award of the Tribunal is to be set aside.

8. The learned counsel appearing for the petitioners 1 to 3 would submit that the Tribunal has clearly found that only due to negligent driving of the driver of the Auto, the accident had occurred. Further, the notional income adopted by the Tribunal is well-balanced and therefore, it does not require any interference.

9. I have heard the learned counsel appearing on either side and perused the materials available on record.

10. The points arise for consideration in this Civil Miscellaneous Appeal are as follows:



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1) Whether the percentage of deduction made by the Tribunal towards the contributory negligence on the part of the deceased is proper? and

2) Whether the compensation awarded by the Tribunal in all the heads are required to be modified?

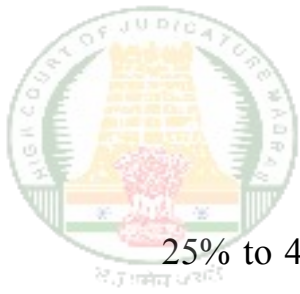
11. Admittedly, the deceased hit the Auto, which was heading towards the Motor Cycle in a busy road. The evidences adduced on the side of the petitioners and the 2nd respondent – Insurance Company clearly show that the road is a busy road and hot spot of the city, Madurai. It is the admitted fact of the petitioners that the deceased hit the Auto in the left back side and due to such impact, the deceased fell down and sustained head injury. Though it is stated in the claim petition as well as in the evidence that the Auto driver drew the Auto in a rash and negligent manner and applied the break, there is no material available on record to show that the driver of the Auto was in fact driven the Auto in a rash and negligent manner and applied sudden break and the tire mark also has not been collected by the Investigating Agency. In fact, FIR has been registered as against the deceased and after his death, the same has been closed. Be that as it may. When a person driving in a two wheeler, particularly, in a busy area, ought to have maintained some distance between the vehicle proceeding head of their vehicle. Whereas, the



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evidences of P.W.1 and R.W.2 clearly show that the deceased hit the motor cycle in the left side of the Auto. Though it clearly shows that there is some ailment of negligence on the part of the deceased, the contention of the petitioners that the Auto was driven in a high speed and the deceased was riding the motor cycle in a very slow speed, it defers logic. If such contention may possible, when the Auto is coming from the opposite direction. Whereas, the Auto and the Motor Cycle were proceeding with the same directions. If the Auto was driven in a high speed, the deceased also would have proceeded with the same high speed. The contention of the petitioners that the deceased was riding his Motor Cycle in a very slow manner is highly improbable and riding the motorcycle in the same speed and hit the Auto in the left rear side of the Auto clearly projects the defence herein that some negligence on the part of the deceased. While riding the Motorcycle, there was no reasonable distance maintained by the deceased. Therefore, this Court is of the view that when there was a negligence on the part of the deceased, fixing the liability as 75% on the Insurance Company is on the higher side.

12. Considering the over all situation, this Court is of the view that the deceased, in fact, contributed for accident to some extent and therefore, the apportionment of negligence has to be increased on the part of the deceased from



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25% to 40%. With regard to the contention of the learned counsel appearing for the 2nd respondent – Insurance Company that the deceased was riding his Motorcycle in a drunken stage, though some fluid was found in the Postmortem report, there is no concrete evidence available to show that there was a smell of Alcohol at the time of conducting Postmortem. Therefore, the contention of the 2nd respondent – Insurance Company that the deceased was riding his Motorcycle in a drunken stage cannot be countenanced. Be that as it may. Considering the fact that the deceased also not wearing helmet and driven the Motorcycle very closure to the Auto and hit against the Auto in the left rear side, it cannot be said that only Auto driver is fully responsible for the accident. Though it is the duty of the Auto to use the horn or indicator, while taking turn, at the same time, the negligence on the part of the deceased also cannot be ignored all together.

13. In view of the above, this Court fixes 60% negligence on the part of the 2nd respondent – Insurance Company and 40% negligence on the part of the deceased. In respect of other aspects are concerned, the Tribunal fixed the notional income of the deceased at Rs.12,000/- per month. Admittedly, the deceased was a practicing advocate at the relevant point of time and the same was established by way of evidence that he was working as Advocate Clerk in the



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Advocate Office. Normally, any ordinary Clerks without any legal knowledge, can easily get such income in the Advocate Office. Such being a position, notional income fixed by the Tribunal at Rs.12,000/- per month cannot be held to be excessive. The Tribunal has correctly applied the multiplier of 16, considering the age of the deceased. Further, as per the judgment of the Hon'ble Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi and others* reported in **2017 16 SCC 680**, the Tribunal has correctly deducted 40% towards the future prospects. Though the Tribunal has awarded a sum of Rs.1,20,000/- towards consortium to all the petitioners, only the wife is entitled to get consortium. Therefore, the first petitioner is entitled to get Rs.40,000/- towards loss of consortium and the petitioners 2 and 3 are entitled to get Rs.40,000/- each towards loss of love and affection or parental consortium.

14. In view of the above, this Court is of the view that the amount awarded by the Tribunal does not require any interference and the same is confirmed, except the negligence fixed by the Tribunal on the part of the deceased as 25%. If 40% contributory negligence is fixed on the part of the deceased, the compensation amount comes to Rs.13,80,240/-. Therefore, a sum of Rs.13,80,240/- is awarded as compensation.



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15. In the result, this Civil Miscellaneous Appeal is partly allowed. The 2nd respondent – Insurance Company is directed to deposit the compensation amount Rs.13,80,240/- along with interest at the rate of 7.5% p.a., less the amount, if any, already deposited, from the date of petition till the date of deposit, within a period of 12 weeks from the date of receipt of a copy of this order, if not deposited earlier. On such deposit, the first petitioner is entitled to get a sum of Rs.7,80,240/-. The petitioners 2 and 3 are entitled to get a sum of Rs.3 lakhs each. The petitioners 1 to 3 are permitted to withdraw 50% of their share amount with proportionate interest and cost and the remaining 50% of their share amount is ordered to be invested in any one of the nationalized Bank for a period of three years and the same may be withdrawn with permission of the Court, if any need arises prior to that. The excess amount, if any, shall be refunded to the 2nd respondent – Insurance Company. No costs. Consequently, connected miscellaneous petition is closed.

07.03.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

- 1.The Motor Accident Claims Tribunal,
District and Sessions Judge,
Communal Clash Cases Court, Madurai.
- 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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