



Civil Miscellaneous Appeal No.1791 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1791 of 2024
and CMP No.14234 of 2024

The Branch Manager,
United India Insurance Company Limited
D.No.22B, P.R.Sundaram Iyer Street,
Dharmapuri – 636 701

... Appellant

Vs.

1. Tamilbharathi

2. Minor Harini

3. Minor Kiruba

4. Chinnapappa

5. M.Madhu

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgement and decree dated 13.10.2023 made in M.C.O.P.No.72 of 2020 in the Court of Exclusive Motor Accident Claims Tribunal, Dharmapuri.

For Appellant : Dr.C.Paranthaman

For Respondents : Mr. M.Selvam



WEB COPY



Civil Miscellaneous Appeal No.1791 of 2024

JUDGMENT

The Insurance company has filed the present appeal aggrieved by the award passed by the Court of Exclusive Motor Accident Claims Tribunal, Dharmapuri in M.C.O.P.No.72 of 2020 dated 13.10.2023.

2. The claimants who are the wife, two minor children and the mother of the deceased Kandhasamy filed the claim petition on the ground that the deceased Kandhasamy was proceeding in a two wheeler at Kuppur- Kurumpatti road and at about 6.45 p.m, the driver of the offending vehicle which was a JCB vehicle came in the opposite direction and it was driven in a rash and negligent manner. The offending vehicle hit the two wheeler. As a result of which, the deceased was thrown out of the vehicle and he sustained grievous injuries and succumbed to the injuries. An FIR came to be registered against the driver of the offending vehicle. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.



WEB COPY

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. The Tribunal in order to reach this finding, has relied upon the eye witness account of PW2 and also the FIR marked as Ex.P1 and the final report which was marked as Ex.P2.

4. The Tribunal thereafter proceeded to determine the total compensation at Rs.30,44,000/- under various heads in the following manner:-

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of Dependency	Rs.28,35,000/-
2.	Loss of consortium	Rs. 44,000/-
3.	Loss of Love and affection (Children)	Rs.88,000/-
4.	Filial Consortium (Father and mother)	Rs.44,000/-
5.	Loss of estate	Rs.16,500/-
6.	Funeral expenses	Rs.16,500/-



Civil Miscellaneous Appeal No.1791 of 2024

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
7.	Medical Expenditure	Nil
	Total	Rs.30,44,000/-

The Tribunal directed the above compensation to be paid with interest at the rate of 7.5% p.a.

5. The insurance company has preferred this appeal mainly questioning the negligence aspect on the ground that there was contributory negligence on the part of the deceased, which was not considered by the tribunal.

6. Heard Dr.C.Paranthaman, learned counsel for appellant insurance company and Mr.M.Selvam, learned counsel for respondents 1 to 4.

7. This Court carefully considered the submissions made on either side and the materials available on record.

8. This Court also carefully went through the award passed by the Tribunal.



WEB COPY

9. The main ground that was urged by the learned counsel for the appellant was that the rider of the two wheeler did not have a valid driving license and there was no proof to show that he was wearing an helmet and it was not established that the two wheeler was covered by any insurance policy. To substantiate his submission, the learned counsel relied upon the evidence of PW2.

10. In the considered view of this Court, the issue regarding the contributory negligence is not a matter of assumption and it has to be proved like any other fact based on the evidence that is let in before the Tribunal.

11. The mere non possession of a driving license or not wearing an helmet, by itself cannot lead to the assumption that there was contributory negligence. The Tribunal had taken into consideration the eye witness account of PW2, who clearly spoke about the manner in which the accident took place. That apart, the Tribunal also took into consideration the FIR that was registered against the driver of the



WEB COPY

offending vehicle and also the final report that was filed by the police after the completion of the investigation. The insurance company did not take any effort to examine the driver of the offending vehicle in order to establish that there was some amount of contributory negligence on the part of the deceased.

12. In the light of the above discussion, the finding of the Tribunal fixing the entire negligence on the driver of the offending vehicle, does not warrant the interference of this Court.

13. The quantum of compensation fixed by the Tribunal is also very reasonable and there is no scope for interfering with the same.

14. In the result, this Civil Miscellaneous petition is dismissed. The appellant insurance company is directed to deposit the entire compensation amount, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of



Civil Miscellaneous Appeal No.1791 of 2024

payment of compensation remains unaltered. No costs. Consequently, the connected miscellaneous petition is closed.

25.07.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

rka

N.ANAND VENKATESH.,J

rka

To,
Exclusive Motor Accident Claims Tribunal, Dharmapuri.



WEB COPY



Civil Miscellaneous Appeal No.1791 of 2024

Civil Miscellaneous Appeal No.1791 of 2024

25.07.2024