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C.M.A.No.2830 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.2830 of 2021

The Branch Manager,
Shriram General Insurance Company Limited,
O-3, 1st Floor, NMS Tower, Indira Nagar,
Palladam Main Road,
Tiruppur Town & District, Tamil Nadu.

... Appellant

Versus

1.Fairima

2.Zamruth

3.Minor Jabeenataj

4.Minor Mubarak

[Minors are represented by next friend & her mother
Mrs. Zamruth, the 2nd respondent herein.]

[Respondent No. 3 is *Suo motu* declared as major
and her mother/Zamruth is discharged from guardianship
of the respondent No. 3, vide order of this Court
dated 09.12.2024 made in CMA.No.2830 of 2021]

5. Latha V.

6. Manju T.

7.The Manager-Claim,
Shriram General Insurance Co.Ltd.,
E-8, EPIP, RICO Industrial Area,
Sitapura, Jaipur Rajasthan.



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C/o. The Branch Manager,
Shriram General Insurance Co.Ltd.,
Opposite CSI Church,
Denkanikottai Main Road, Hosur.

... Respondents

[7th respondent is given up since the appellant and the 7th respondent is a same entity]

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 23rd day of March, 2020 made in M.C.O.P.No.506 of 2019, on the file of the Motor Accident Claims Tribunal, Additional District Court, Hosur, and be pleased to dismiss the claim for compensation.

For Appellant : Mr. S. Dhakshinamoorthy

For Respondents : Mr. C. Prabakaran (for R1 to R4)

: No Appearance (for R5 to R7)

: Dismissed as not pressed,
Vide order dated 24.06.2024. (for R6)

JUDGMENT

The Appellant/Insurance Company has filed the above appeal questioning the challenging the quantum of compensation awarded as well as the liability fixed on them by the Tribunal.



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2. The case of the respondents 1 to 4/claimants is that, the deceased/ Rahmathulla was employed as an auto-driver by the sixth respondent herein/ 3rd respondent therein and out of such employment, he was earning a sum of Rs.15,000/- per month. On 26.05.2012, as per instructions of the sixth respondent, who is the owner of the Autorikshaw bearing Registration No. TN-07-K-8358, the deceased driven the Autorikshaw from Housur bus stand to surrounding places at 10:00 P.M. While driving the Autorikshaw with passengers from Hosur Bus stand to SIPCOT-II, near flyover opposite to Ashok Leyland – Unit II, a Maruti Omni Van bearing Registration No.TN-33-AK-1818 owned by the fifth respondent, was parked by its driver negligently without any caution indicator. Due to darkness, the driver of the autorikshaw could not apply brake after noticing the van closely and dashed into the rear side of the parked vehicle. In the impact, the deceased sustained serious injuries all over his body and lost his life. Therefore, the respondents 1 to 4/claimants filed a claim petition before the Tribunal, claiming a sum of Rs.1,21,10,000/- as compensation for the death of the deceased.

3. The claim petition was resisted by the fifth respondent herein/first respondent therein contending that the deceased was wholly responsible for the accident, which occurred due to his failure to follow road rules and his



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carelessness.
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4. The seventh respondent herein adopted the counter filed by the first respondent and denied the age, monthly income and other particulars furnished by the claimants. They also stated that an unidentified Lorry had ramped the deceased Autorikshaw, causing it to dash into the parked Maruthi Omni Van, and thereby, the deceased sustained grievous injuries and lost his life. The FIR reveals the fact that the driver of the Lorry is wholly responsible for the accident and a criminal case has also been registered under Section 279 and 338 of IPC against the driver of the unknown lorry. Therefore, the claimants are not entitled to claim any compensation against the respondents. Consequently, the claim petition has to be dismissed on the ground of non-joinder of necessary party.

5. In order to substantiate the above, on the side of the claimants, the second respondent herein/second claimant was examined as P.W.1 and one eye-witness was examined as P.W.2 and documents were marked as Ex.P1 to Ex.P14. On behalf of the respondents therein, one witness was examined as R.W.1, however, no document was marked.



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6. The Trial Court, after appreciating the arguments advanced by the learned counsel for the claimant and considering the documents filed, awarded a sum of Rs.25,44,200/- by fixing 95% liability on the side of the Insurance Company/appellant herein and 5% on the side of the deceased. Challenging the fixation of 95% liability on the appellant/Insurance Company, the appellant/ Insurance Company has filed the above Civil Miscellaneous Appeal before this Court.

7. Learned counsel for the appellant/Insurance Company would submit that as the First Information Report/Ex.P1 was registered against an unknown lorry driver. The First Information Report itself shows that the autorikshaw driver was hit by an unknown lorry and thereafter, the autorikshaw driver dashed against the fifth respondent's parked vehicle. However, the unknown lorry was not impleaded as a party respondent before the claims tribunal. While so, fixing 95% liability against the Insurance Company is not sustainable. On this sole ground, it is contended that the appeal filed by the appellant has to be allowed.

8. Learned counsel appearing for the respondents 1 to 4/claimants submits that though the First Information Report was registered against an



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unknown lorry driver, the vehicle – Van insured with the appellant was parked on the road side without any indication which led to the accident. This was established thorough the examination of the eye witness/P.W.2. In the absence of any independent witnesses examined on the side of the respondents to disprove the testimony of PW2, the tribunal fastened 95% of liability as against the appellant, which need not to be interfered with by this Court. Therefore, he prays to dismiss the appeal.

9. Per contra, learned counsel for the appellant/Insurance Company submits that the deceased was employed with the sixth respondent herein firm/3rd respondent therein. The vehicle was owned by the sixth respondent herein. If it is so, it is for the respondents 1 to 4/claimants have to prove that the deceased possessed valid driving license to drive the autorikshaw. In the present case, no valid driving license was marked before the Tribunal. However, this issue was not properly adjudicated by the claims tribunal while fastening 95% liability as against the appellant/Insurance Company and prayed for appropriate orders.

10. Heard the learned counsel for the appellant/Insurance Company and the learned counsel appearing for the respondents 1 to 4/claimants and perused



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the materials available on record.

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11. The manner of accident is not disputed by the parties and the parties have not raised any issue on the aspect of negligence and therefore, this Court is not venturing into the same.

12. In the present case, initially, the autorikshaw was hit by an unknown lorry and the autorickshaw, in turn, dashed against the parked vehicle. Though such a statement is available in the First Information Report/Ex.P1, it was not established before the claims tribunal, by adducing appropriate evidence, The informant of the first information report was not examined besides no independent witness was examined. On behalf of the respondents 1 to 4/claimants, P.W.1 and P.W.2 were examined and on that basis, the Tribunal fixed 95% of liability as against the appellant/Insurance Company, which need not to be interfered with.

13. In respect of the possession of license by the deceased driver, the deceased claims to be an Auto driver and he was engaged by the sixth respondent. If it is so, the respondents 1 to 4/claimants have to establish the possession of the valid driving license by the deceased at the time of accident.



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In the present case, no such driving license was produced before the claims tribunal. However, without driving license, the Tribunal fastened the 95% of the liability on the appellant/Insurance Company and fixed 5% of contributory negligence on the part of the deceased driver, which is unfair. Hence, this Court is of the opinion that contributory negligence on the part of the deceased driver can be fixed at 10% and 90% of liability on the side of the appellant/Insurance Company which would be just and reasonable.

14. As far as the quantum of compensation is concerned, the tribunal has rightly appreciated all the evidence adduced on both sides and applied the multiplier method, future prospects by considering the age, occupation as also dependents of the deceased to award a sum of Rs.25,44,200/- as compensation. In effect, the break up details of the modified award amount are as follows:-

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Granted, Confirmed, Enhanced and Modified</i>
Loss of dependency	Rs.17,28,000/-	-	Confirmed
Loss of love and affection	Rs.40,000/-	-	Confirmed
Transportation	Rs.10,000/-	-	Confirmed
Funeral Expenses	Rs.15,000/-	-	Confirmed



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Heads	Amount awarded by the Tribunal	Amount awarded by this Court	Granted, Confirmed, Enhanced and Modified
Loss of Estate	Rs.20,000/-	-	Confirmed
Future Prospects	Rs.6,91,200/-	-	Confirmed
Loss of Consortium	Rs.40,000/-	-	Confirmed
Total	Rs.25,44,200/- After deducting 5% towards contributory negligence, the total compensation is Rs.24,16,990/-	After deducting 10% towards contributory negligence, the total compensation is fixed at R.22,89,780/-	Modified differentiate amount is Rs.2,54,420/-

15. When the claim petition was filed in the year 2019, the 3rd appellant was aged about 13 years. Now, the 3rd appellant should be aged about 19 years and is therefore, major. Though no application has been taken out to declare the 3rd appellant as major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the 3rd appellant as major and discharges her guardian Mrs. Zamruth, from the guardianship. The Registry shall carry out the necessary amendments.

16. In the result, this Civil Miscellaneous Appeal is partly allowed on the following terms:



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(i) The award passed by the Tribunal in M.C.O.P. No. 506 of 2019 is modified by reducing the compensation from **Rs.25,44,200/-** to **R.22,89,780/-** along with interest at the rate of 7.5% per annum from the date of petition till the date of realization.

(ii) The appellant/Insurance Company is directed to deposit the reduced award amount now determined by this Court, to the credit of M.C.O.P.No.506 of 2019, along with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this judgment.

(iii) On such deposit, the Tribunal is directed to transfer the compensation amount directly to the bank account of the respondents/claimants through RTGS within a period of two (2) weeks thereafter. Any amount, in excess of the award ordered by this Court, which has already been deposited by the Insurance Company, the Insurance Company is permitted to seek withdrawal of the same by filing necessary application before the Tribunal.

(iv) Insofar as the compensation in favour of the minor 4th respondent/4th claimant is concerned, the Tribunal is directed to invest the same in an interest bearing fixed deposit initially for a period of three years to be renewed till they attain majority and the quarterly interest accrued thereon shall be paid



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to the 2nd respondent/mother of the minor claimant for being used for the welfare of the minor. It is underscored that the respondents/claimants are not entitled to any interest for the default period, if any.

(v) The apportionment of the compensation of the respondents/the claimants 1, 2 and 4 are concerned, the 1st respondent/mother of the deceased is entitled to a sum of **Rs.2,99,185/-** and 2nd respondent/wife of the deceased is entitled to a sum of **Rs.12,90,595/-** and the 3rd and 4th respondents are entitled to **Rs.3,50,000/- each** totally Rs.7,00,000/-.

(v) There shall be no order as to costs in the present civil miscellaneous appeal.

09.12.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
klt

To

1. The Motor Accident Claims Tribunal, Additional District Court, Hosur.
2. The Section Officer, V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.,

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