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Civil Miscellaneous Appeal No.1269 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 13.06.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

**Civil Miscellaneous Appeal No.1269 of 2024**

1.N.Kuppathal  
W/o.Nachimuthu Gounder

2.N.Ramathal  
W/o.Nachimuthu Gounder

3.K.Poongodi  
W/o.Kuppusamy

4.N.Nattrayan  
S/o.Nachimuthu

... Appellants

Vs.

1.M.Palanisamy  
S/o.Muthusamy

2.The United India Insurance Company Ltd.,  
Kolathupalayam, Kolathupalayam Post,  
Dharapuram Taluk, Tiruppur District.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 14.03.2023 made in M.C.O.P.No.68 of 2018 on the file of Motor Accident Claims Tribunal, III Additional District and Sessions Judge, Tiruppur, Dharapuram.

For Appellants : Mr.M.Lokesh

For Respondents : Mr.T.Shanmugarajeswaran [R1]  
Mr.D.Venkatachalam [R2]

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**JUDGMENT**



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The claimants, who are the wives, daughter and son of the deceased, not being satisfied with the quantum of compensation awarded and aggrieved by attribution of 5% contributory negligence on the deceased by the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, Tiruppur, Dharapuram, in M.C.O.P.No.68 of 2018, dated 14.03.2023, have filed this appeal.

2. The case of the claimants is that the deceased was riding a bicycle on 28.06.2017 at Mulanur to Oddanchatram main road and at about 08.00 a.m. near Ayyampalayam Privu, the first respondent drove the tractor in a rash and negligent manner and hit the bicycle, as a result of which the deceased lost balance, fell down and sustained grievous injuries and he succumbed to the injuries. It is under these circumstances, the claim petition came to be filed before the Tribunal.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a categorical conclusion that the first respondent had driven the vehicle in a rash and negligent manner and caused the accident. However, considering



the age of the deceased, which was 75 years at the time of accident as also the fact that he was carrying two pots in the bicycle, the Tribunal proceeded to attribute 5% contributory negligence on the part of the deceased.

4. After having come to such a conclusion, the Tribunal also found that the RC Book of the offending vehicle had expired on 01.02.2017 itself and the first respondent was also not having a valid driving license. In view of the same, the second respondent was exonerated from paying the compensation and the first respondent was made liable to pay the compensation.

5. The Tribunal fixed the total compensation at Rs.3,61,000/- under various heads as follows:

| <i><b>Sl. No.</b></i> | <i><b>Compensation awarded under the head</b></i> | <i><b>Amount (in Rs.)</b></i> |
|-----------------------|---------------------------------------------------|-------------------------------|
| 1.                    | Loss of Income                                    | 2,40,000/-                    |
| 2.                    | Loss of consortium                                | 88,000/-                      |
| 3.                    | Funeral expenses                                  | 16,500/-                      |
| 4.                    | Loss of estate                                    | 16,500/-                      |
|                       | <b>Total</b>                                      | <b>3,61,000/-</b>             |

From the amount of Rs.3,61,000/-, the Tribunal deducted 5% towards contributory negligence and fixed the total compensation at Rs.3,43,000/-



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. This amount was directed to be paid with interest at 7.5% p.a.

6. The appellants/claimants, aggrieved by the award passed by the Tribunal, have filed this appeal seeking for enhancement of compensation and for setting aside the finding of the Tribunal attributing 5% towards contributory negligence.

7. Heard Mr.M.Lokesh, learned counsel for appellants/claimants and Mr.T.Shanmugarajeswaran, learned counsel for first respondent and Mr.D.Venkatachalam, learned counsel for second respondent.

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

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

10. In the instant case, there is no dispute with regard to the fact that the second respondent insurance company had received the premium and issued the policy and as on the date of accident, the offending vehicle was covered by a insurance policy. However, the period of Registration



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Certificate of the offending vehicle had expired and there was no material to show that first respondent had driven the vehicle with a valid licence. In such a scenario, the Tribunal ought not to have exonerated the insurance company considering the fact that a third party claim has been made. Therefore, the Tribunal ought to have applied the pay and recover method in this case.

11. The Tribunal specifically found that the accident had occurred due to the rash and negligent driving on the part of the first respondent. The Tribunal has relied upon the evidence of PW-1 and also Ex.P1, which was the First Information Report to come to this conclusion. However, the Tribunal attributed 5% contributory negligence on the deceased on the ground that the deceased was aged about 75 years and he was carrying two water pots in the bicycle and therefore, he could not have ridden the bicycle with proper balance. This finding of the Tribunal is only based on assumption. There is no ground to attribute contributory negligence against the deceased after having found that the accident had taken place only due to rash and negligent driving on the part of the first respondent. Therefore, the finding with regard to contributory negligence is hereby set aside.



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12. The quantum of compensation that has been fixed under various heads is reasonable and it does not require the interference of this Court.

13. In the light of the above discussion, the second respondent insurance company is directed to deposit the total compensation of Rs.3,61,000/- together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six (6) weeks from the date of receipt of this judgment. On such payment, the second respondent insurance company will be entitled to recover the same from the first respondent and the claimants are entitled to withdraw the amount as apportioned by the Tribunal, on due application.

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

**13.06.2024**

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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To  
The Motor Accident Claims Tribunal,  
III Additional District and Sessions Judge,  
Tiruppur, Dharapuram.

**N.ANAND VENKATESH, J.**

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