



CMA.(MD)No.360 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 06/06/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No. 360 of 2024

and

CMP (MD) No. 4835 of 2024

M/s.United India Insurance Co., Ltd.,
Branch Officer-1,
Promenade Road,
Cantonment,
Trichy-1.

: Appellant/2nd Respondent

Vs.

1.Shanmuga Priya

2.Minor Mithra

(Minor 2nd respondent herein
represented through mother
and guardian the 1st respondent
herein)
(Cause title accepted, vide
Court order, dated 19/02/2024
made in CMP(MD)No.21930 of 2024
in CMA(MD)SR No.9589 of 2024)

3.Janaki

: Respondents 1 to 3/
Petitioners 1 to 3

4.V.Kannaiyan

: 4th Respondent/
1st Respondent

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the judgment/order, dated 04/07/2022 passed in MCOP No.820 of 2018 on the file of the Motor Accident Claims Tribunal (Special District Court), Tiruchirapalli and to pass any such further or other orders.



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For Appellant : Mr.C.Karthik
For R1 to R3 : Mr.N.Sudhagar Nagaraj

JUDGMENT

This Civil Miscellaneous Appeal is filed seeking an order to set aside the award, dated 04/07/2022 passed in MCOP No.820 of 2018 by the Motor Accident Claims Tribunal (Special District Court), Tiruchirapalli.

2.The facts in brief:-

On 13/10/2018 at about 09.30 pm, the deceased Dharmabalan was riding his two wheeler bearing registration No.TN-45-BH-2067 on the Pudukottai-Trichy road. When he was nearing Kottapattu KNS Electrical weigh-bridge, a Lorry bearing registration No.TN-Y-9650 was proceedings in front of him. It was driven in a rash and negligent manner and hit the two wheeler driven by the deceased. Dharmabalan sustained grievous injuries, taken to the Government Hospital, Trichy, but without responding to the treatment, he died on 14/10/2018.

3.Over the occurrence, a case in Crime No.278 of 2016 was registered for the offences under sections 279, 337 and 304(A) IPC by the Trichy South Traffic Police Investigation Wing. At the time of accident, the deceased was aged about 29 and working as Crane Helper and Painter



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and earning not less than Rs.600/- per day. Claiming compensation of Rs.20,00,000/-, the claim petition was filed.

5.That was resisted by the Insurance Company stating that only the deceased invited the accident and the offending vehicle of the first respondent is not responsible.

6.Before the Tribunal, on the side of the claimants, 2 witnesses were examined and 10 documents were marked. On the side of the Insurance Company, 2 witnesses were examined and no document was marked. The deceased Dharmabalan viscera report was marked through the witness as Ex.X1.

7.At the conclusion of the enquiry, the Tribunal on the basis of the evidence available on record, found that even though the deceased was in a drunken mood, he was not responsible for the accident. On the basis of the oral evidence of PW2 the eye witness, the Tribunal concluded that there was no evidence to prove that the deceased was under influence of alcohol. That was not the reason for inviting the accident. So, the first respondent vehicle driver was held responsible for the occurrence.



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8.Regarding the compensation, the Tribunal found that no proper documentary evidence was produced to prove the income of the deceased. It took the nominal amount of Rs.250/- per day and took up Rs.7,500/- as monthly income. Finding that he was aged about 30 years at the time of the occurrence, by adopting proper multiplier of 17 and after proper deduction, the Loss of Income was fixed at Rs.14,28,000/-. To that, customary amounts were added. Finally it fixed the compensation at Rs.15,60,000/- as detailed hereunder:-

Loss of Dependency	Rs.14,28,000/-
Transportation charges	Rs. 7,000/-
Loss of Estate	Rs. 10,000/-
Loss of consortium to the 1 st claimant	Rs, 35,000/-
Parental Consortium to the 2 nd claimant	Rs. 35,000/-
Filial Consortium to the 3 rd claimant	Rs. 35,000/-
Funeral expenses	Rs. 10,000/-
Total	Rs.15,60,000/-

9.Aggrieved over the same, the Insurance Company is preferred this appeal.

10.Heard both sides.



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11.The learned counsel appearing for the appellant Insurance Company would submit that when the deceased was found driving the vehicle under the influence of alcohol, the Tribunal ought to have fixed the contributory negligence at the ratio of 50:50.

12.Per contra, the learned counsel appearing for the respondents 1 to 3 would submit that there is a clear finding by the Tribunal that even though the viscera report of the deceased indicates that he was in drunken mood under the influence of alcohol, no contributory negligence can be fixed upon the deceased and the Tribunal findings must be confirmed.

13.First of all, the manner of the accident must be taken into consideration. The first respondent vehicle was proceeding in front of the deceased vehicle. It is not the case of the claimants that the first respondent vehicle driver suddenly applied the brake or suddenly crossed the road and that was the reason for the deceased to hit the Lorry.

14.PW2 is the eye witness to the occurrence. He has stated in his evidence that he was standing on the left side of the road in the place of occurrence and witnessed



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the event. He has also stated that the first respondent vehicle driver without making any signal tried to turn left. In that process, Dharmabalan was hit. During the cross examination, it was suggested to him that the first respondent vehicle was turning towards left and at that time, there was sufficient space on the right hand side. Meaning of this suggestion is that the first respondent vehicle driver tried to turn the vehicle left. The deceased Dharmabalan was behind the Lorry. So naturally, it would have hit the vehicle. So the manner of the accident does indicate that in the process of turning left, the occurrence took place.

15.RW1 is the first respondent vehicle driver. He has stated in his evidence that he stopped the vehicle on the right side of the road. At that time, the deceased Dharmabalan hit the vehicle back. This is not the suggestion put to PW2. Even if we can say that RW1 stopped the vehicle on the left of the road, the reason is not explained by him. He was proceeding from south to north, naturally he has to turn towards right to reach the godown area. Had he made any signal to Darmabalan, the accident would have been averted.



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16. Equally, Dharmabalan was also under the influence of alcohol, it did not exceed the permitted limit of 3.0 ml. But he was found drunken with 2.6 ml. He has not exceeded the permitted limit. By taking the alcohol, it appears that he had driven the vehicle. Actually, he failed to notice the vehicle turning on the right side. So he was also responsible. So, the contributory negligence can be fixed at 50:50.

17. On that score, the finding of the Tribunal that the occurrence took place exclusively due to the rash and negligence on the part of the first respondent vehicle is *per se* not proper. So, the findings of the Tribunal on that aspect is liable to be interfered and accordingly interfered. The contributory negligence is fixed at 50:50.

18. Regarding the compensation, no argument was advanced by the appellant.

19. Total compensation awarded by the Tribunal is tabulated herein.

Loss of Dependency	Rs.14,28,000/-
Transportation charges	Rs. 7,000/-
Loss of Estate	Rs. 10,000/-



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Loss of consortium to the 1 st claimant	Rs, 35,000/-
Parental Consortium to the 2 nd claimant	Rs. 35,000/-
Filial Consortium to the 3 rd claimant	Rs. 35,000/-
Funeral expenses	Rs. 10,000/-
Total	Rs.15,60,000/-

20. Reading of the order of the Tribunal does indicate that the monthly income was reasonably fixed, which requires no interference. Other customary amounts were also reasonably fixed, which requires no interference by this court. But out of the compensation amount of Rs.15,60,000/-, 50% contributory negligence must be deducted. By deducting the contributory negligence, the claimants are entitled to Rs.7,80,000/-.

21. In the result, this Civil Miscellaneous Appeal is **allowed**. The compensation awarded by the Tribunal is modified to the effect that the appellant Insurance Company is liable to pay only **Rs.7,80,000/-** along with interest of 7.5% per annum from the date of petition till the date of deposit. The dependents namely the respondents 1 to 3 are permitted to withdraw the amount as per the apportionment of the Tribunal immediately after following proper procedure before the Tribunal. If any excess amount, the same shall be returned back to the



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appellant Insurance Company. No costs. Consequently,
connected Miscellaneous Petition is closed.

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Index:Yes/No
Internet:Yes/No
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To,

1.The Motor Accident Claims Tribunal/
Special District Judge,
Tiruchirappalli.

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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