



C.M.A(MD)No.208 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

C.M.A(MD)No.208 of 2024

and

C.M.P(MD)No.2482 of 2024

Divisional Manager,
United India Insurance Company Limited,
7-A West Veli Street, Opposite to Railway Station,
Madurai District. : Appellant/2nd Respondent

Vs.

1.Menaga : 1st respondent/1st petitioner

2.Minor.Deepak Dil Dev
(Minor 2nd petitioner represented
by his mother and Guardian
1st petitioner Menaga) : 2nd respondent/2nd petitioner

3.Poomani : 3rd respondent/3rd petitioner

4.Kumaravelu : 4th respondent/4th petitioner

5.Ravichandran : 5th respondent/1st respondent

6.Jana : 6th respondent/3rd respondent

(Petition amended as per order dated 30.08.2022 in I.A.No.1 of 2022)



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PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the order, dated 16.11.2023 passed in M.C.O.P.No.14 of 2020 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Mudukulathur.

For Appellant : Mr.I.Suthakaran

For R1 to R4 : Mr.D.Senthil

For R5 : No appearance

JUDGMENT

[Judgment of the Court was made by
K.K. RAMAKRISHNAN.J.]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal, Subordinate Court, Mudukulathur in M.C.O.P.No.14 of 2020, dated 16.11.2023, the Insurance Company has filed the present appeal.

2.For the sake of convenience, the parties are referred herein as per their ranking before the Tribunal.



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3.The appellant Insurance is the second respondent in M.C.O.P.No. 14 of 2020, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Mudukulathur. The respondents 1 to 4 are the claimants and they filed the claim petition in M.C.O.P.No.14 of 2020 claiming a sum of Rs.75,00,000/-(Rupees Seventy Five Lakhs only) as compensation for the death of husband of the first claimant, father of the second claimant and son of the claimants 3 & 4 in the accident that occurred on 09.08.2018. By the order, dated 16.11.2023, the Tribunal awarded a sum of Rs.42,73,500/- (Rupees Forty Two Lakhs Seventy three Thousand Five Hundred only) as compensation.

4.Facts of the Case:-

According to the claimants 1 to 4, on 09.08.2018 at about 08.30 hours, while the deceased was riding the motorcycle bearing Registration No.TM-19-Q-9644 from Mamallapuram – Thirupporur near Thandalam Village, the driver of the fifth respondent drove the lorry bearing Registration No.TN-02-PC-7026 in front of the two-wheeler in a rash and negligent manner and suddenly stopped the vehicle in the middle of the road without indicating any signal, hence, the two-wheeler dashed behind right side of the lorry and sustained head injury. Due to the said



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impact, the deceased died on the spot. The deceased was aged about 28 years at the time of accident and he was working in the Medical shop and earning a sum of Rs.26,451/- per month. The FIR was registered by the Thiruporur police station against the driver of the fifth respondent. The sixth respondent is the owner of the two wheeler ridden by the deceased. The accident occurred only due to the rash and negligent driving by the driver of the fifth respondent. Therefore, the claimants filed the claim petition, claiming a sum of Rs.75,00,000/- (Rupees Seventy Five Lakhs only) as compensation.

5.The appellant filed the counter statement and denied all the averments made in the claim petition and contended that the accident did not occur due to the rash and negligent driving of the driver of the fifth respondent. The deceased did not wear the helmet at the time of accident and hence, he himself invited the death and prayed for dismissal of the claim petition.

6.Before the Tribunal, to prove the case of the claimants, P.Ws.1 & 2 were examined and marked Ex.P1 to Ex.P8. On the side of the respondents, R.W.1 was examined and Ex.R1 and Ex.R2 was marked.



7.Finding of the Tribunal:

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The Tribunal, considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants held that the accident occurred only due to the rash and negligent driving by the driver of the fifth respondent and the deceased. Hence, the Tribunal has fixed 75% negligence on the driver of the fifth respondent and 25% negligence on the deceased as the deceased did not follow the traffic rules and directed the appellant insurance company to pay a sum of Rs.42,73,500/-(Rupees Forty Two Lakhs Seventy Three Thousand Five Hundred only) as compensation under the heads are as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
1	Loss of Income	Rs.55,08,000/-
2	Loss of consortium for the wife	Rs. 40,000/-
3	Love and affection for the claimants 2 to 4 (Rs.40,000/- each)	Rs. 1,20,000/-
4	Funeral Expenses	Rs. 15,000/-
5	Loss of Estate	Rs. 15,000/-
	Total	Rs.56,98,000/-
6	<u>Less:</u> 25% negligence of the deceased	Rs.14,24,500/-
	Total compensation awarded	Rs.42,73,500/-

Aggrieved over the same, the appellant filed this appeal.



8. Submission of the learned counsel for the appellant:

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(i) The learned counsel for the appellant submitted that the Tribunal, without properly appreciating the evidence of R.W.1 and the various circumstances, which leads to the conclusion of the negligence on the part of the deceased, erroneously came to the conclusion that the driver of the fifth respondent was responsible for the accident. He also submitted that P.W.2 is an interested witness and hence, his testimony is to be rejected.

(ii) The tribunal ought to have fixed the entire negligence upon the deceased since he only invited the death by dashing behind the lorry which was going in front of him.

(iii) The learned counsel further submitted that the Tribunal granted extraordinary award without following the guidelines issued by the Hon'ble Supreme Court.

9.Submission of the learned counsel for the respondent:

The learned counsel for the respondents 1 to 4/ claimants submitted that P.W.2 is not an interested witness and that he is an independent witness and he cogently deposed about the accident and that there is no reason to disbelieve his version. The FIR and final report also



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were filed against the driver of the fifth respondent. He has not disputed the above filing of the final report and the involvement of the vehicle in question. Hence, he seeks for confirmation of the finding of the Tribunal on negligence.

(ii) The learned counsel further submitted that on the basis of the salary certificate, the Tribunal has properly calculated the quantum. Further, 50% of future prospects awarded by the Tribunal is correct. The multiplier as 17 adopted by the Tribunal is also correct and hence, no interference is warranted by this Court. Hence, he seeks for dismissal of this appeal.

10. Aggrieved against the said award, dated 16.11.2023, the appellant-Insurance Company has filed the present appeal.

11. We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondents and also perused all the materials available on record.



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12. The following points arise for consideration of this appeal:

12.1. Whether the negligence is correctly fixed on the driver of the insured vehicle?

12.2. Whether the compensation granted is in accordance with law?

13. Discussion on the negligence:

It is the case of the claimants that on 09.08.2018 at about 08.30 pm, while the deceased was riding the motorcycle bearing Registration No.TM-19-Q-9644 from Mamallapuram – Thirupporur near Thandalam Village, the driver of the fifth respondent drove the lorry bearing Registration No.TN-02-PC-7026 in front of the two-wheeler in a rash and negligent manner and suddenly stopped the vehicle in the middle of the road, hence, the two-wheeler dashed behind the right side of the lorry and he sustained head injury. Due to the said impact, the deceased died on the spot. The deceased was aged about 28 years at the time of accident and he was working in the Medical shop and earning a sum of Rs.26,451/- per month. The FIR was registered by the Thirupporur police station against the driver of the fifth respondent. After the investigation, charge-sheet has been filed. P.W.2 an independent witness cogently



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deposed that driver of the lorry suddenly stopped the vehicle in the middle of the road without indicating any signal. Even though, he was subjected to cross-examination, no material was elicited on the side of the appellant's insurance company to disbelieve his evidence. His evidence is trustworthy and no materials were let in on the side of the appellant to doubt his testimony. Further, R.W.1/driver of the vehicle was examined and he deposed that FIR was registered against him and final report was filed against him and the criminal case was pending against him. Even as per his version, the deceased without following the rules, in a rash and negligent manner dashed behind the lorry. But the evidence of the independent witness P.W.2 and the materials collected by the investigation officer clearly proved that R.W.1 stopped the vehicle without any signal and the Tribunal fixed the negligence 75% on the driver of the insured vehicle and the deceased also without following the traffic rules, drove the vehicle and dashed behind the lorry and so 25% negligence was fixed on the deceased. In view of the above discussion, this Court finds no perversity in the findings of the Tribunal in fixing the negligence on both sides. Hence, the appellant insurance company is liable to pay 75% compensation.



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WEB COPY **14.Discussion on quantum**

The learned Tribunal granted compensation of Rs.42,73,500/-. The learned counsel for the appellant submitted that the learned Tribunal, granted extrorbitant amount as compensation. To appreciate the said contention, this Court perused the salary certificate of the deceased and other relevant documents and observes as follows:

14.1. The deceased was working in the Medical shop and he is aged about 28 years and his salary certificate was marked as Ex.P6. As per Ex.P6, his salary is Rs.24,000/- and no contrary evidence was let in to disbelieve the above monthly income. Therefore, this Court is fixing the monthly income of the deceased as Rs.24,000/- and 50% future prospects also is fixed as per the judgment in the case of *[National Insurance Co. Ltd., v. Pranay Sethi]* reported in **2017(2) TNMAC 609 (SC)**. The age of the deceased is 28 years and since there are four dependents, so 1/4th is deducted for personal expenses and applying the multiplier of “17” and calculats the loss of income as follows:-



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14.2.Calculation of the amount:

Rs.24,000 X (50/100 future prospects) = Rs. 12,000/-.
Monthly income (Rs.24,000/- + Rs.12,000/-) = Rs. 36,000/-.
36,000 X 12 X 17 multiplier = Rs.73,44,000/-
73,44,000 – 18,36,000 (1/4th personal expenses) = Rs.55,08,000/-.
Loss of Income = Rs.55,08,000/-

14.3.The non pecuniary damages as per the *Pranay sethi case* is calculated as follows:

<i>heads</i>	<i>Amounts</i>
Loss of consortium for the wife	Rs. 40,000/-
Love and affection for the claimants 2 to 4 (Rs.40,000/- each)	Rs.1,20,000/-
Funeral Expenses	Rs. 15,000/-
Loss of clothes	Rs. 15,000/-

Totally, the amount comes around Rs.56,98,000/- and after deducting 25% for the negligence on the part of the deceased, comes around Rs.56,98,000 – Rs.14,24,500/- = Rs.42,73,500/-. The Tribunal awarded the compensation of Rs.42,73,500/- to the claimants.

14.4.Therefore, we are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference.



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15. Conclusion

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For the foregoing reasons, the compensation awarded by the Tribunal to the claimants, under the various heads enumerated hereunder:

<i>Sl.No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
1	Loss of Income	Rs.55,08,000/-
2	Loss of consortium for the wife	Rs. 40,000/-
3	Love and affection for the claimants 2 to 4 (Rs.40,000/- each)	Rs. 1,20,000/-
4	Funeral Expenses	Rs. 15,000/-
5	Loss of Estate	Rs. 15,000/-
	Total	Rs.56,98,000/-
6	<u>Less:</u> 25% negligence of the deceased	Rs.14,24,500/-
	Total compensation awarded	Rs.42,73,500/-

In view of the above, this Court finds no merit in the contention of the learned counsel appearing for the appellant insurance company.

16. Accordingly, this Civil Miscellaneous Appeal is dismissed and the judgment and award passed by the Motor Accidents Claims Tribunal – Subordinate Court, Mudukulathur in M.C.O.P.No.14 of 2020, dated 16.11.2023 is hereby confirmed. The appellant Insurance company is



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directed to deposit the award amount with proportionate accrued interest and costs, and can deduct the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw their share amount as per the apportionment made by the Tribunal. Further, the Tribunal is directed to deposit the share of the minor claimant in any one of the nationalised banks, as fixed deposit under the cumulative deposit scheme, till the minor attains majority and the first claimant being mother and natural guardian is permitted to withdraw the interest once in six months directly from the Bank. The minor claimant on attaining majority is permitted to withdraw his share. No costs. Consequently, connected miscellaneous petition is closed.

**(V.B.S.J.,) (K.K.R.K.J.,)
12.03.2024**

Index :Yes/No
Internet :Yes/No
am/sbn



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- To**
- 1.The Motor Accident Claims Tribunal,
Subordinate Court,
Mudukulathur.
 - 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN.J.,
and
K.K. RAMAKRISHNAN.J.,

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Dated: 12.03.2024