BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2024

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.242 of 2020
and
C.M.P.(MD) No.3589 of 2020

The Oriental Insurance Company Limited,
Rep. by its Branch Manager,
1024-J, Srivijay Complex 2nd Floor,
Old Bus Stand Opposite,
Theni – Cumbum Road,
Theni District. ... Appellant

Vs.

1.C.Kamatchi @ Kalaiselvi (Died)
W/o.Late.R.Chinnasamy

2.C.Pavithra
D/o.Late.R.Chinnasamy

3.Minor.C.Abinayasri
D/o.Late.R.Chinnasamy

4.Minor.C.Yuvasri
D/o.Late.R.Chinnasamy

5.A.Rasu
S/o.Avaiyan

6.R.Panchavarnam
W/o.Rasu

7.A.Naveenkumar
S/o.Ananthan ... Respondents

[The second respondent was declared as major and the first respondent was discharged from the guardianship *vide* the separate order passed by this Court today in C.M.P.(MD) Nos. 9409 of 2024]

[The first respondent died. Minor 3rd and 4th respondents are represented by their sister and guardian, the second respondent, C.Pavithra, as appointed by this Court *vide* this order]

[The fifth and sixth respondents died]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Decree and Judgment made in M.C.O.P.No.59 of 2018 dated 17.12.2019, on the file of the Motor Accident Claims Tribunal cum Additional District Judge, Periyakulam.

For Appellant : Mr.C.Chandrasekaran

For R1 to R4 : Mr.K.Appadurai

For R7 : No appearance

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the finding on negligence and the quantum of compensation awarded by the Motor Accident Claims Tribunal [Additional District

Court], Periyakulam, *vide* its Judgment and Decree dated 17.12.2019 passed in M.C.O.P.No.59 of 2018.

2. The first to sixth respondents filed a claim petition before the Tribunal, stating that on 10.10.2018, at about 09.15 a.m., while the deceased was riding his two-wheeler, the rider of the another two-wheeler insured with the appellant, which was going in front of the two-wheeler ridden by the deceased, suddenly took a right turn without any indication, as a result of which the deceased collided with the said insured two-wheeler, which caused fatal injuries to the deceased.

3. The owner of the insured two-wheeler, the seventh respondent herein, filed a counter stating that the deceased came in a rash and negligent manner and collided with the insured two-wheeler from behind, as a result of which both he and the deceased sustained injuries.

4. The appellant, Insurance Company, filed a counter stating that the accident took place only due to the negligence of the deceased, and hence, they are not liable to pay compensation, and that in any case, the compensation claimed was excessive.

5. Before the Tribunal, the claimants examined P.W.1 to P.W.4 and marked Exs.P1 to P12. The owner of the insured vehicle, the seventh respondent herein, examined himself as R.W.1. The appellant, Insurance Company, examined R.W.2 and R.W.3 and marked Exs.R1 to R4.

6. The Tribunal, after taking into consideration the oral and documentary evidence, fixed the entire liability on the appellant, Insurance Company, and awarded a compensation of Rs.25,17,700/- to the first to sixth respondents/claimants.

7. The learned counsel for the appellant, Insurance Company, submitted that FIR was originally lodged by the rider of the insured two-wheeler against the deceased and thereafter, the same was altered and the final report was filed against the rider of the insured two-wheeler, which is erroneous; that the evidence of RW1, coupled with the Rough Sketch (Ex.R1) prepared by the police after the investigation, would show that the accident took place only due to the negligence of the deceased; that in any case, the Tribunal ought to have fixed the contributory negligence on the deceased; and that the compensation awarded by the Tribunal by

fixing the exaggerated notional income and by applying the wrong multiplier has to be reduced.

8. The learned counsel for the first to fourth respondents, per contra, submitted that the finding on negligence is in accordance with law and since only 10% was added towards future prospects, the compensation requires to be enhanced and prayed for enhancement of compensation.

9. Though the notice has been served on R7, the owner of the insured two-wheeler, none has entered appearance.

10. The points for consideration in the instant appeal are: (a) whether the finding on negligence by the Tribunal is justified; and (b) whether the quantum of compensation awarded by the Tribunal is just and reasonable.

11. As regards the first question, it is seen that the first to sixth respondents/claimants had examined P.W.2, the eyewitness, and P.W.4, Sub-Inspector of Police, who had filed a final report against R.W.1, the rider of the insured two-wheeler, in the criminal case. The claimants had

also marked the final report as Ex.P2, which accused R.W.1 of rash and negligent riding and taking a sudden turn, which caused the accident. Though R.W.1 was examined and deposed before the Tribunal that it was the deceased who caused the accident, this Court is of the view that since R.W.1 is an interested witness, his evidence cannot be accepted in the light of the evidence of P.W.2, the eyewitness, and the records of the criminal case. However, it is seen from Ex.R1, Rough Sketch prepared by the police, that both the vehicles were proceeding from west to east and the accident had taken place on the northern side of the road, which suggests that R.W.1 had not taken a complete right turn. However, in view of the evidence adduced on the side of the claimants, it is seen that only because R.W.1 had taken a right turn, the accident took place. Thus, it is clear that the accident had taken place predominantly due to the rider of the insured two-wheeler (R.W.1). Considering the fact that the deceased ought to have been careful and should have kept a safe distance, this Court is of the view that it would be just and reasonable to fix 10% contributory negligence on the deceased. Point No.1 is answered accordingly.

12. As regards the quantum of compensation, the Tribunal has fixed the notional income of the deceased at Rs.16,000/- per month. Though the claimants examined P.W.1, the wife of the deceased, to establish that the deceased was working as a tailor, no documentary evidence was produced either to prove the avocation or the income of the deceased. The claimants have, however, produced the Salary Certificate (Ex.P11) issued by the employer of the deceased, who was examined as P.W.3. This Court is of the view that in the absence of any other contemporaneous document to corroborate Ex.P11, which is in the nature of a letter, the contents in the said Salary Certificate cannot be accepted.

13. Considering the age of the deceased, the year of the accident, and the avocation of the deceased, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.14,000/- per month. 25% of the income has to be added towards future prospects. Since the deceased was aged 42 years, multiplier applicable is 14. Since there are six dependents, 1/4th has to be deducted towards personal expenses. Thus, the compensation under the head 'loss of income' would be Rs.22,05,000/- [Rs.14,000/- + 25% x 12 x 14 x ¾]. The award under the other heads is just and reasonable and is therefore confirmed. The

total compensation is modified as follows:

Sl. No	*Heads*	*Amount awarded by the Tribunal*	*Amount awarded by this Court*	*Award confirmed, enhanced or reduced*
1	Loss of Income	Rs.22,07,700/-	Rs.22,05,000/-	Reduced
2	Loss of Love and Affection (40,000 x 6)	Rs. 2,40,000/-	Rs. 2,40,000/-	Confirmed
3	Loss of Consortium	Rs. 40,000/-	Rs. 40,000/-	Confirmed
3	Transport Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
4	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
Total		**Rs.25,17,700/-**	**Rs.25,15,000/-**	Reduced by **Rs.2,700/-**
After deducting 10% contributory negligence on the deceased, the total compensation would be **Rs.22,63,500/-** (Rs.25,15,000/- x 90/100),				

14. It is reported by the learned counsel for the appellant, Insurance Company, that the appellant, Insurance Company, has deposited the entire compensation amount awarded by the Tribunal.

15. If the appellant has not deposited the entire compensation, the appellant is directed to deposit the aforesaid modified compensation of Rs.22,63,500/- together with interest at 7.5% per annum from the date of the claim petition till the date of realization and costs, after deducting the amount already deposited, if any, within a period of four (4) weeks from

the date of receipt of a copy of this Judgment.

16. The appellant, Insurance Company, is permitted to withdraw the excess amount already deposited, if any, by filing an application before the Tribunal.

17. It is reported by the learned counsel for the claimants that the first, fifth, and sixth respondents passed away during the pendency of this appeal. Therefore, the second to fourth respondents shall be entitled to the compensation equally.

18. The second respondent/second claimant has attained majority, which was recorded by this Court *vide* a separate order passed today in C.M.P.(MD) Nos.9409 and 9414 of 2024. Thus, the second respondent/second claimant is permitted to withdraw her share along with the proportionate interest and costs, less the amount already withdrawn by the first, fifth, and sixth respondents/first, fifth, and sixth claimants during their lifetime, by filing an application before the Tribunal.

19. Since the first respondent/first claimant, the mother of the

minors, is no more, and the second respondent, who is the elder sister of the minors, attained majority and was recorded as major, she is appointed as the guardian of the third and fourth respondents/third and fourth claimants.

20. The shares of the third and fourth respondents/third and fourth claimants are directed to be deposited in an interest-bearing fixed deposit [F.D.] in any nationalized bank until they attain majority. The second respondent/second claimant is permitted to withdraw the accrued interest once every three months, for the benefit of the minor children.

21. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

10.09.2024
(2/2)

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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Copy To:

1.The Additional District Judge,
Motor Accident Claims Tribunal,
Periyakulam, Theni District.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras high Court,
Madurai.

SUNDER MOHAN, J.

JEN

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(2/2)