



C.M.A.(MD) No.1016 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1016 of 2024

and

C.M.P(MD)No.10516 of 2024

M/s.National Insurance Co. Ltd.,
DO X, Hero Vertical,
101-106, BMC House,
Cannaught Place,
New Delhi – 110 001.

... Appellant

Vs.

S.Vellathai (Died)
1.S.Sudalaimuthu,
2.M.Rani,
3.Minor M.Mathan,
4.Minor M.Suresh,
[Minor R3 and R4 are represented by their mother & natural
guardian M.Rani, second respondent]
5.M.Subbulakshmi,
6.V.Parvathi,
7.L.Marutha Nachiyar,
8.M.Indira Selvi,
9.P.Murugan.

... Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor
Vehicles Act, 1988 against the award dated 11.07.2023 made in



C.M.A.(MD) No.1016 of 2024

M.C.O.PNo.103 of 2018 on the file of the Motor Accident Claims Tribunal cum Principal District Court, Thoothukudi and allow this appeal.

For Appellant : Mr.R.Rajamani

For Respondents

R1 to R8 : Mr.P.Vinoth

R9 : Dispensed with

J U D G M E N T

The instant Civil Miscellaneous Appeal has been filed by the Insurance Company against the award, dated 11.07.2023 made in M.C.O.PNo.103 of 2018 passed by the Motor Accidents Claims Tribunal cum Principal District Judge, Thoothukudi.

2. The respondents 1 to 8 filed a claim petition stating that the deceased was travelling as a pillion rider in the vehicle ridden by the ninth respondent herein (first respondent in claim petition), in a rash and negligent manner, who dashed the vehicle in a barricade, as a result of which, the deceased sustained fatal injuries.

3. The ninth respondent herein/first respondent in claim petition, filed a counter denying the averments in the claim petition.

4. The appellant herein/second respondent in the claim petition filed



C.M.A.(MD) No.1016 of 2024

a counter stating that the accident took place because the ninth respondent and the deceased had consumed alcohol and therefore, the appellant herein is not liable to pay the compensation and that in any case, the compensation claimed by the claimants was excessive.

5. The claimants examined three witnesses and marked Exs.P1 to P28. The appellant herein examined R.W.1/Doctor, who made entries in the Accident Register. They had not marked any document.

6. The Tribunal, after taking into account the oral and documentary evidence, held that the accident took place due to the rash and negligent riding of the ninth respondent herein and held that the respondents 1 to 8 herein/claimants are entitled to the compensation of Rs.11,03,400/- payable by the appellant.

7. The learned counsel for the appellant submitted that the order of the Tribunal is erroneous inasmuch as it had fixed the entire liability on the appellant Insurance Company and the fact that the deceased had consumed alcohol, has been ignored by the Tribunal. The learned counsel further submitted that the notional income fixed at Rs.12,000/- for the



C.M.A.(MD) No.1016 of 2024

deceased, who was aged 65 years when the claimants have not established either the avocation or the income, is excessive.

8. The learned counsel for the respondents 1 to 8, per contra, submitted that the appellant Insurance Company had not established the fact that the deceased was under the influence of alcohol as per the provisions of Section 185 of the Motor Vehicle Act, 1988 and that the notional income fixed by the Tribunal is reasonable and hence, no interference is called for.

9. In view of the grounds raised in the appeal, this Court is of the view that notice to the ninth respondent can be dispensed with.

10. The points for consideration in the instant appeal are as follows:

“a. Whether the Tribunal was right in not fixing contributory for negligence on the deceased for riding pillion in an inebriated condition?

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 appellant had not established that the rider and the pillion rider were under the influence of



C.M.A.(MD) No.1016 of 2024

alcohol, although there is no evidence to show that they had consumed alcohol. However, the very fact that the rider and the pillion rider/the deceased, who travelled, had consumed alcohol and had taken a ride in two wheeler, itself is sufficient to attribute negligence on the side of the deceased. Considering the facts and circumstances of the case, this Court is of the view that it is just and reasonable to fix 10% contributory negligence on the part of the deceased for riding as a pillion rider in an inebriated condition, knowing fully well that the rider was also in an inebriated condition. Therefore, this Court is of the view that the deceased is liable for 10% for contributory negligence.

12. As regards the quantum of compensation, this Court is of the view that though the claimants had examined the employer and marked the salary certificate Ex.P28, the Tribunal had held that the said document is not acceptable. Since no other contemporary document was produced by the employer either to prove the employment or the salary of the deceased, the Tribunal had rightly adopted a notional income.

13. As regards the quantum, this Court is of the view that considering the facts that the deceased was aged 65 years, the year of



C.M.A.(MD) No.1016 of 2024

accident and the number of dependants, it would be just and reasonable to adopt the notional income at Rs.12,500/- p.m,. It is seen that the Tribunal had deducted 1/5 share towards personal expenses, considering the number of dependants and adopted the multiplier '7' which is correct. Therefore, the award of compensation under the head of loss of income has to be Rs.12,500/- x 12 x 7 x 4/5 = Rs.8,40,000/-. The award under the other heads are confirmed. Thus, the compensation is modified as follows:

<i>Sl. No</i>	<i>Description</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
1	Loss of Income	Rs.8,06,400/-	Rs.8,40,000/-	Enhanced
2	Loss of Estate	Rs.16,500/-	Rs. 16,500/-	Confirmed
3	Loss of Love and Affection	Rs.2,64,000/-	Rs.2,64,000/-	Confirmed
4	Funeral Expenses	Rs.16,500/-	Rs.16,500/-	Confirmed
Total		Rs.11,03,400/-	Rs.11,37,000/-	
10% towards contributory negligence		---	(-) Rs.1,13,700/-	
Total		Rs.11,03,400/-	Rs.10,23,300/-	Reduced by Rs.80,100/-

14. The appellant Insurance Company shall deposit the modified compensation amount of Rs.10,23,300/- (Rupees Ten Lakhs Twenty Three Thousand and Three Hundred only) with the interest @ 7.5% p.a from the date of the claim petition till the date of realization (excluding



C.M.A.(MD) No.1016 of 2024

the period of dismissal for default if any) and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of receipt of a copy of this order.

15. On such deposit, the respondents 1, 2 and 5 to 8/claimants are entitled to withdraw the aforesaid amount together with proportionate interest and costs, equally, less the amount already withdrawn, if any, as per the ratio of apportionment made by the Tribunal, by filing appropriate application before the Tribunal. The respondents 1, 2 and 5 to 8/claimants are directed to pay the necessary Court Fee, if any, on the enhanced amount.

16. The Tribunal is directed to deposit the share amount of the minor claimants/respondents 3 and 4 herein in any one of the Nationalised Bank in an interest bearing Fixed Deposit, initially for a period of three years, renewable thereafter, till the minors attain majority. The guardian of the minors/second respondent herein, who is their mother, is permitted to withdraw interest from the said deposit, once in three months and utilise the same for the welfare of the minors claimants/respondents 3 and 4 herein.



C.M.A.(MD) No.1016 of 2024

WEB COPY 17. In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs. Consequently, connected miscellaneous petition is closed.

14.08.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:

The Motor Accident Claims Tribunal Cum Principal District Judge,
Thoothukudi.



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C.M.A.(MD) No.1016 of 2024

SUNDER MOHAN, J.

apd

C.M.A.(MD) No.1016 of 2024

14.08.2024