



C.M.A.(MD) No.1312 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2024

CORAM

**THE HON'BLE MR.JUSTICE SUNDER MOHAN**

**C.M.A.(MD) No.1312 of 2024**

Johnson (died)

1.Boopathi

2.Vaijanthi Mala

3.Tamizharasan

... Appellants

Vs.

1.Abdul Ajees

2.The Manager,  
M/s.United India Insurance Company Limited,  
No.4, Royal City, Karur Road,  
Trichy-2.

... Respondents

Prayer: Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988, to allow the appeal and enhance the compensation and fix liability in M.C.O.P.No.1787 of 2015, dated 04.03.2022 on the file of the Motor Accidents Claims Tribunal / Special District Judge (MACT), Trichirappalli.

For Appellants  
For R-2

: Mr.P.Rajalingam  
: Mr.E.Chandrasekaran

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## **J U D G M E N T**

**WEB COPY** The Civil Miscellaneous Appeal has been filed by the claimants challenging the finding of the Tribunal as regards liability and seeking enhancement of compensation.

2. The appellants have filed the claim petition stating that while the deceased, who was walking on a public road, the vehicle insured with the second respondent came in a rash and negligent manner and dashed against the deceased, as a result of which she sustained fatal injuries.

3. The learned counsel appearing for the second respondent / Insurance Company submitted that the accident took place only due to the negligence of the deceased and that the rider of the insured vehicle did not have any valid license and hence, they are not liable to pay the compensation.

4. Before the trial Court, on the side of the appellants, two witnesses were examined as P.W.1 and P.W.2 and nine documents were marked as Ex.P1 to Ex.P9. On the side of the respondents, one witness



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was examined as R.W.1 and two documents were marked as Ex.R1 and

WEB COPY Ex.R2.

5. The Tribunal, after recording the evidence, held that the accident took place only due to the negligence of the rider of the insured vehicle and that the rider was a minor and therefore, the owner of the vehicle is liable to pay the compensation, viz, the first respondent herein and the Tribunal had determined the compensation payable at Rs.7,97,000/- (Rupees Seven Lakhs and Ninety Seven Thousand only) to the claimants.

6. The learned counsel appearing for the appellants would submit that it is well settled law that if the vehicle is ridden by a person without a valid license, the Insurance Company can be directed to pay and recover the compensation from the person and therefore, the finding of the tribunal directing the owner to pay the compensation has to be set aside. He further submitted that the award is meagre, since a low notional income was fixed by the Tribunal and prayed for enhancement.

7. Notice sent to the first respondent has been returned with an



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endorsement no such address. This Court is of the view that notice to the first respondent can be dispensed with since the first respondent remained *exparte* before the Tribunal. Further, the award is against the first respondent and he has not chosen to challenge the same.

8. The learned counsel for the second respondent per contra submitted that the award of the Tribunal fastening liability on the first respondent and fixing the quantum of compensation at Rs.7,97,000/- (Rupees Seven Lakhs and Ninety Seven Thousand only) cannot be faulted; therefore, he prayed for dismissal of the appeal.

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

*“1. Whether the finding of the Tribunal fastening liability on the first respondent to pay the compensation is justified?”*

*2. Whether the quantum of compensation awarded by the Tribunal is just and reasonable?”*



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10. As regards the first point, it is seen that the second respondent / Insurance Company had established that the rider of the insured vehicle was a minor, by marking the final report, Ex.A.1, in which the minor was shown as an accused. R.W.1, who is the Sub Inspector of Police, had conducted the investigation and filed the final report before the concerned Court. Therefore, the violation of the policy condition has been established by the second respondent. The owner of the vehicle, who remained *exparte* before the Tribunal, has not chosen to challenge the award fastening liability on him.

11. It is well settled law that when there is any violation of the Policy condition, the Insurance Company can be directed to pay the compensation at the first instance and recover such compensation from the owner. Therefore, the award of the Tribunal directing the first respondent to pay the compensation is modified and this Court directs the second respondent / Insurance Company to pay the compensation at the first instance and recover such amount from the owner / first respondent.



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12. As regards the second question, this Court finds that the deceased was working as a Coolie. However, no proof of income was produced by the appellants. Considering the year of the accident and the age of the deceased, this Court is of the view that it would be reasonable to fix Rs.9,000/- as the monthly notional income of the deceased. The deceased was aged '41 years' at the time of the accident. Hence, the multiplier applicable is '14' and 25% should be added towards future prospects. Since there are four dependents,  $\frac{1}{4}$  has to be deducted towards personal expenses. Thus, the compensation under the head "loss of income" has to be  $9000 + 2250 (25\%) * 12 * 14 * \frac{3}{4} = \text{Rs.14,17,500/-}$

13. The compensation awarded under the head of loss of consortium before the Tribunal is Rs.35,000/- to each of the claimants, which is enhanced to Rs.40,000/- each to the claimants. The award under the other heads are confirmed. **Thus, the compensation is modified as follows:**



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| <b>Sl. No</b> | <b>Description</b>                 | <b>Amount awarded by the Tribunal</b> | <b>Amount awarded by this Court</b> | <b>Award confirmed, enhanced or granted</b> |
|---------------|------------------------------------|---------------------------------------|-------------------------------------|---------------------------------------------|
| 1             | Loss of dependency                 | Rs. 6,30,000/-                        | Rs. 14,17,500/-                     | Enhanced                                    |
| 2             | Loss of Consortium                 | Rs.35,000/-                           | Rs.40,000/-                         | Enhanced                                    |
| 3             | Loss of Parental Consortium        | Rs.1,05,000                           | Rs.1,20,000/-                       | Enhanced                                    |
| 3             | Medical and Transportation charges | Rs. 7,000/-                           | Rs. 7,000/-                         | Confirmed                                   |
| 4             | Loss of Estate                     | Rs. 10,000/-                          | Rs. 10,000/-                        | Confirmed                                   |
| 5             | Funeral Expenses                   | Rs. 10,000/-                          | Rs. 10,000                          | Confirmed                                   |
| <b>Total</b>  |                                    | <b>Rs.7,97,000/-</b>                  | <b>Rs.16,04,500/-</b>               | Enhanced by<br><b>Rs.<br/>8,07,500/-</b>    |

**14.** The second respondent is directed to deposit the compensation amount of Rs.16,04,500/- (Rupees Sixteen Lakhs Four Thousand and Five Hundred only) as determined by this Court before the Tribunal in M.C.O.P.No.1787 of 2015 with accrued interest at 7.5% p.a., from the date of the claim petition till the date of realization and costs, less the amount already deposited, if any, within a period of four (6) weeks from the date of receipt of a copy of this order.



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15. On such deposit, the appellants/claimants are entitled to withdraw their award amount equally with proportionate interest and costs, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal. The appellants/claimants are directed to pay the necessary Court Fee, if any, on the enhanced amount.

16. The second respondent is at liberty to recover the compensation from the first respondent in accordance with the guidelines issued by the Hon'ble Supreme Court in the case of *Nanjappa vs. State of Karnataka* reported in **2015 (1) SCC 550**.

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

No costs.

**25.10.2024**

Index: Yes/ No  
NCC: Yes / No  
Speaking Order / Non-Speaking Order  
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To:  
1.The Motor Accident Claims Tribunal



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/ Special District Judge (MACT), Trichirappalli.

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2.The Manager,  
M/s.United India Insurance Company Limited,  
No.4, Royal City, Karur Road,  
Trichy-2.

3.The Record Keeper,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.

**SUNDER MOHAN, J.**

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