



C.M.A.(MD) No.1015 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD)No.1015 of 2024

and

C.M.P.(MD)No.10501 of 2024

The Divisional Manager,
The Oriental Insurance Company Limited,
No.127/8,
Madurai Road, First Floor,
Bhuvaneswari Complex,
Virudhunagar.

... Appellant

vs.

1.Indhirani,
2.C.Venkateswaran.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order dated 20.02.2024 in M.C.O.P.No.86 of 2020 on the file of the Motor Accidents Claims Tribunal-cum-Additional District Court, Virudhungar.

For appellant : Mr.C.Jawahar Ravindran

For Respondents
for R1 : Mr. A.Sivaji
for R2 : Given up



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J U D G M E N T

The instant appeal has been filed by the insurance company challenging the finding on negligence.

2. The first respondent filed a claim petition stating that while the deceased was travelling from north to south, the offending vehicle insured with the appellant came in the opposite direction in a rash and negligent manner and caused an accident, as a result of which the deceased sustained fatal injuries.

3. The appellant filed a counter stating that the accident took place only due to the negligence of the deceased; that the deceased did not have a valid licence and was not wearing helmet at the time of accident; and that in any case, the compensation claimed was excessive.

4. Before the Tribunal, the claimant/first respondent examined P.W. 1 to P.W.3 and marked Exs.P.1 to P.17. The appellant examined R.W.1 and R.W.2 and marked Exs.R1 and R2.



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5. The Tribunal, after taking into consideration the oral and documentary evidence, held that the rider of the offending vehicle was guilty of rash and negligent driving and directed the appellant to pay the total compensation of Rs.20,76,200/-.

6. The learned counsel for the appellant submitted that the accident took place almost in the center of the road; and that the deceased did not wear helmet and he did not have a valid licence at the time of accident and hence, the Tribunal at least ought to have fixed contributory negligence on the deceased and prayed for reduction of the compensation.

7. The learned counsel for the first respondent, per contra, submitted that the FIR and the Final Report were filed against the rider of the offending vehicle; and that the evidence of PW3/eyewitness would show that the rider of the offending vehicle was guilty of negligence and hence, the finding of the Tribunal need not be interfered with.

8. The only question in the instant appeal is '*whether the finding on negligence is justified?*'



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9. The claimant had examined P.W.3/eyewitness, as stated earlier, to prove the manner of the accident. The rider of the offending vehicle insured with the appellant was examined as R.W.1. It is a fact that the FIR was lodged against the rider of the offending vehicle and the police, after investigation, filed the final report against the rider of the offending vehicle/R.W.1.

10. Ex.P4/rough sketch prepared by the Police would show that the accident took place almost in the center of the road and more towards the eastern part of the road. The rider of the offending vehicle was proceeding from south to north, which would suggest that he was on the wrong side of the road. At the same time, the deceased also could have avoided the accident if he had exercised due care and caution. The rough sketch/Ex.P4 and the evidence of P.W.3 and R.W.1 would suggest that the contributory negligence on the side of the deceased cannot be ruled out.

11. Considering the fact that the rider of the offending vehicle was on the wrong side of the road, that is, more towards the eastern side of the road and the accident was predominantly caused by the rider of the offending vehicle, the contributory negligence on the deceased can be



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fixed at 15%. Though P.W.3/eyewitness had stated that the deceased was not wearing helmet, contributory negligence cannot be inferred on that ground alone. Further, there is no evidence to show that the deceased did not have a valid licence. Therefore, this Court is of the view that the contributory negligence can be fixed at 15% on the deceased. The learned counsel for the appellant is unable to point out any infirmity in the quantum of compensation. Since the learned counsel for the first respondent would submit that no compensation was awarded towards transport expenses, a sum of Rs.15,000/- is awarded under the said head. The award of the Tribunal is thus modified as follows:

<i>S.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 dependency	Rs. 19,99,200/-	Rs. 19,99,200/-	Confirmed
2	Loss of estate	Rs. 16,500/-	Rs. 16,500/-	Confirmed
3	Parental consortium	Rs. 44,000/-	Rs. 44,000/-	Confirmed
4	Funeral expenses	Rs. 16,500/-	Rs. 16,500/-	Confirmed
5	Transport expenses	---	Rs.15,000/-	Granted
	Total	Rs.20,76,200/-	Rs.20,91,200/-	
	15% contributory negligence		(-)Rs. 3,13,680/-	
			Rs.17,77,520/-	Reduced by Rs.2,98,680/-

12. The appellant/Insurance Company is directed to pay 85% of the



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compensation amount which is equal to **Rs.17,77,520/-** (Rupees Seventeen Lakhs Seventy Seven Thousand Five Hundred and Twenty only) together with 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 (4) weeks from the date of receipt of a copy of this order.

13. On such deposit, the first respondent/claimant is permitted to withdraw the award amount with interest and costs, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.

14. In the result, this Civil Miscellaneous Appeal is partly allowed.
No costs. Consequently, connected miscellaneous petition is closed.

30.10.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd



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To

1.The Motor Accidents Claims Tribunal-cum-Additional District Court,
Virudhungan.

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



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SUNDER MOHAN,J

apd

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