



C.M.A.(MD).No.56 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :29.08.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

and

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD).Nos.56 of 2021

and

C.M.P.(MD).No.519 of 2021

M/S.Royal Sundaram General Insurance CO. Ltd.,
No.37, T.V.S.COoperative Store Building,
Krishanarao Tank Street,
Madurai.

Rep. By its Branch Manager

... Appellant

(Cause title accepted vide Court order dated
05.01.2021 made in C.M.P.(MD).No.4733 of 2020)

Vs.

1.Mani Mekala
2.Minor.Janarthana Pandian
3.Minor.Yuga Sri
4.Karupayee
(Minor 2 and 3 represented by their mother and
guardian the first respondent Mani Kekala herein)

5.R.Vijaya Kumar

... Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 02.07.2020 made in M.C.O.P.No.68 of 2016 on the file of the Motor Vehicles Accident Claims Tribunal/Subordinate Court, Uthamapalayam.



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For Appellant	: Mr.M.Jerin Mathew for M/S.M.E.Ilango
For R1 to R4	: Mr.Ananth C.Rajesh
For R5	: No appearance

J U D G M E N T

(Judgment of the Court was made by **K.K.RAMAKRISHNAN.J.,**)

Challenging the award passed by the Motor Vehicles Accident Claims Tribunal/Subordinate Court, Uthamapalayam in M.C.O.P.No.68 of 2016, dated 02.07.2020, the present Civil Miscellaneous Appeal has been filed by the Insurance Company.

2.Facts of the case:

On 17.06.2016 at about 4.30 a.m., when the deceased was proceeding on the USIlampatti-Vathalakundu main Road, Uthappanayakannur, Kamaraj Nagar, Ponmani, from south to north direction, near Wilpap Matriculation School, in his two wheeler bearing Registration No.TN 58 Q 8359, a Lorry bearing Reg.No. TN 91 Z 5718, insured by the appellant insurance company was driven by the driver of the fifth respondent, in a rash and negligent manner in an uncontrollable speed from opposite direction, hit the deceased and hence, he sustained multiple grievous injuries on his head and body. Thereafter, the



deceased was taken to the Usilampatti Government Hospital and died on the way. A case was registered in Crime No.109 of 2016 for the offence under Sections 279 and 304(A) of IPC, against the driver of the fifth respondent in Uthappanayakannur Police Station. The accident occurred only due to the rash and negligent driving of the driver of the lorry. At the time of accident, the deceased was working as Head constable Grade-I, Usilampatti Police Station. His monthly income was Rs.37,400/-. Therefore, the respondents 1 to 4 filed the claim petition, claiming a sum of Rs.70,00,000/- (Rupees Seventy Lakhs only) as compensation.

3.The appellant/Insurance Company filed a counter denying the allegation stated in the petition and they disputed the quantum and also disputed the negligence on the part of the driver of the fifth respondent. They also 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 first 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.



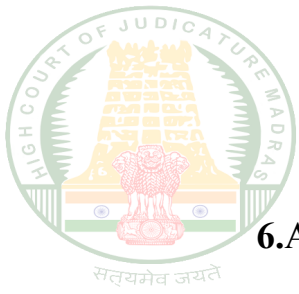
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4. To prove the case of the claimants, on the side of the respondents 1 to 4, P.Ws.1 to 4 were examined and Exs.P1 to P24 were marked and on the side of the appellant, one person namely Govindarajan was examined as R.W.1 and no document was marked.

5. Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence, and arguments of the counsel for the appellant and the respondents held that the accident occurred only due to the rash and negligent driving by the driver of the lorry and directed the appellant Insurance Company, to pay a sum of Rs.55,76,020/- (Rupees Fifty Five Lakhs and Seventy Six Thousand and twenty only) as compensation along with 7.5% interest from the date of filing of the claim petition under the following heads:-

S. No.	Heads	Amount awarded by the Tribunal
1.	Loss of income	Rs.42,35,400/-
2.	Loss of consortium to the first respondent.	Rs.40,000/-
3.	Loss of love and affection	Rs.25,000/-
4.	Funeral Expenses	Rs.5,000/-
5.	Future loss of income	Rs.12,70,620/-
Total		Rs.55,76,020/-



6. Aggrieved against the said award dated 02.07.2020, the appellant/ insurance company has filed the present appeal.

7. The learned counsel appearing for the appellant would submit that P.W.2 is a chance witness and his presence is not proved in accordance with law and hence, his evidence is to be disbelieved. His evidence is contradictory to documentary evidence. with the document evidence. According to him, the deceased was wearing helmet and same got damaged due to the accident caused by the appellant insured vehicle. The said evidence is contradictory to the documentary evidence. Hence, his presence is doubtful and the finding of the learned Tribunal Judge on the basis of the said evidence is not legally correct. He also submitted that R.W.1 was examined and R.W.1 clearly deposed that the deceased himself is responsible for the accident and he was coming in a rash and negligent manner and dashed against the lorry. This said evidence is supported by the documents. Therefore, the negligence fixed upon the driver of insured vehicle namely R.W.1 is not correct.

8. The learned counsel appearing for the respondents/claimants would submit that the Tribunal Judge considered Ex.P.22/rough sketch prepared by the investigating agency, after registration of the case, filed before the jurisdictional



Court along with the final report. The certified copy clearly shows that R.W.1

drove his lorry and transgressed into the side of the two wheeler and caused accident. The document itself shows the accident was caused by the driver/R.W.

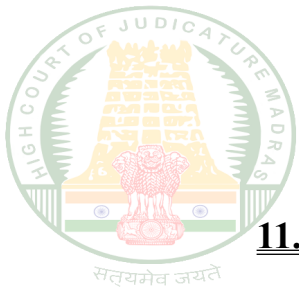
1. Therefore, the learned Tribunal Judge considered this aspect along with the evidence of the independent witness P.W.2. There was no cross examination of P.W.2, relating to the doubt of his presence. Hence, P.W.2 was correctly believed based on Ex.R.2 and evidence of the investigating officer and the final report filed against R.W.1 in Ex.P.21. The learned trial judge correctly fixed the negligence. Hence, there is no need to interfere with the same.

9.This Court considered the rival submission made by the learned counsel appearing on either side and also perused the materials available on record.

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

10.1.Whether the negligence is correctly fixed on the driver of the vehicle insured with the appellant?

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



11.Discussion on Negligence:

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The contention of the learned counsel for the insurance company that P.W.2 chance witness has to be disbelieved cannot be accepted for the reason that his presence was clearly proved and his evidence is cogent. This Court has no reason to disbelieve his evidence. That apart, on perusal of Ex.P.22/Rough Sketch, it is clear that the appellant insured vehicle was driven by the driver of the fifth respondent on the date of the occurrence. Hence, there is no dispute relating to the involvement of the vehicle. The appellant insured vehicle proceeded towards north to south direction. Ex.P.22/Rough Sketch clearly demonstrated that without going on the eastern side, he went to the extreme western side of the road and caused the accident. From the said fact itself, this Court can easily apply the principle of the *res ipso loquitur* and hence, the driving the vehicle out of his lane, namely, instead of going on the left side of the road, he went outside the western side, which shows rash and negligence on the part of R.W.1. The said fact was correctly appreciated by the learned Tribunal Judge. Therefore, this Court has no jurisdiction to interfere in the said finding. Hence, this Court is unable to accept the argument of the learned counsel for the appellant insurance company. The Tribunal Judge has rightly believed the evidence of P.W.2 and exhibits marked on the side of the claimants and correctly disbelieved the version of R.W.1 even R.W.1 has not deposed that



he was going on the left side of the road in the right direction, and deceased only hit the lorry on the left side of the lorry. There is no questioning about the genuineness of the sketch prepared by the investigating agency. No question asked or elicited during the cross examination of P.W.4 and other witnesses. In the said circumstances, even as per the evidence of R.W.1, he has not deposed that he was keeping the extreme left side of the road, which is meant for the lorry to proceed towards Usilampatti. In the said circumstances, the case of the negligence on the part of the deceased cannot be accepted.

12.Discussion on quantum:

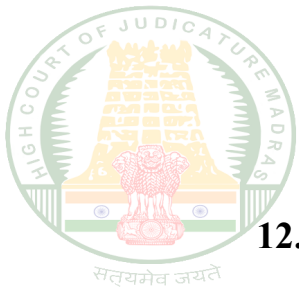
The deceased was a Government Servant and aged about 48 years and as per Ex.P.20, the deceased salary is Rs.36,200/-. Hence, 30% for future prospects, and deduction 1/3 for personal expenses and applying the multiplier as 13, of the monthly income of the deceased is correct and the same are as follows:

$$[\text{Rs.}36,200 + \text{Rs.}10,860 (30/100)] = \text{Rs.}47,060/-$$

$$[\text{Rs.}47,060 - 11765 (1/4)] = \text{Rs.}35,295/-$$

$$\text{Rs.}35,295/- \times 12 \times 13 = \text{Rs.}55,06,020/-$$

$$\text{Loss of Income} = \text{Rs.}55,06,020/-$$



12.1. The non pecuniary damages as per the Pranay Sethi case is calculated as follows:-

For Funeral Expenses	Rs. 5,000/-
Love and affection	Rs. 25,000/-
Consortium for the wife	Rs. 40,000/-

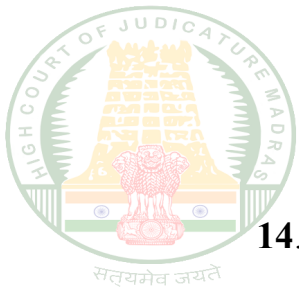
12.2. Therefore, we are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference.

13.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants 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.55,06,020/-
2	For Funeral Expenses	Rs. 5,000/-
3	Love and affection	Rs. 25,000/-
4	Consortium for the wife	Rs. 40,000/-
Total		Rs.55,76,020/-

In view of the above, the claim made by the appellant/insurance company is rejected.



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14. Accordingly, this Civil Miscellaneous Appeal is dismissed and the judgment and award passed by the Motor Vehicles Accident Claims Tribunal/Subordinate Court, Uthamapalayam, in M.C.O.P.No.68 of 2016, dated 02.07.2020, is hereby confirmed. The appellant insurance company is directed to deposit the award amount with proportionate accrued interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the major claimants are permitted to withdraw the award amount as apportioned by the Tribunal, less the amount, if any already withdrawn, by making necessary application before the Tribunal. The Tribunal shall deposit the shares of the minor claimant in a Fixed Deposit under the cumulative deposit scheme in any one of the Nationalized Banks, till they attain majority. The mother / guardian of the minors is permitted to withdraw the interest accrued thereon once in three months directly from the bank. No costs. Consequently, connected miscellaneous petition is closed.

[P.V.J.] [K.K.R.K.,J.]
29.08.2024

Index : Yes/No
Internet : Yes/No
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To

1. The Motor Vehicles Accident Claims Tribunal/
Subordinate Court, Uthamapalayam.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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P.VELMURUGAN.J.,
and
K.K.RAMAKRISHNAN,J.

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