



C.M.A.(MD)No.305 of 2018

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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DATED : 09.12.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN  
AND  
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**C.M.A.(MD)No.305 of 2018  
and  
C.M.P.(MD)No.4167 of 2018**

The Manager,  
National Insurance Company Limited,  
Hero Honda Vertical 101-106,  
BMC House Cannaught Place,  
New Delhi.

... Appellant

Vs.

1.P.Kesavadharini,  
*(Minor 1st Respondent is declared as major and  
Guardianship of her Grand Mother (R3) is  
discharged vide order dated 06.08.2021 made in  
C.M.P.(MD)No.11808 of 2019 in  
C.M.A.(MD)No.305 of 2018 by VBDJ & JNBJ)*

2.Minor.P.Bagavadsaran,  
Rep. by his Next Friend / Maternal Grand Mother  
V.Thamarai / 3rd Respondent.

3.V.Thamarai

4.N.M.Kaman

5.T.Palanivel



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**6.G.Muthuraja**

**... Respondents**

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**Prayer** : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Principal District Court, Karur in M.C.O.P.No.353 of 2013 dated 03.10.2016.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.N.Sudhagar Nagaraj

### **JUDGMENT**

**(Judgment of the court was delivered by G.R.Swaminathan, J.)**

This civil miscellaneous appeal arises out of the order dated 03.10.2016 made in M.C.O.P.No.353 of 2013 on the file of the Principal District Court, Karur. The insurer is the appellant.

2.T.Palanivel, the husband of the deceased was riding a two wheeler. His wife and their two minor children were the pillion riders. On account of sudden applying of brake, the vehicle skidded and all the four of them fell down and sustained grievous injuries. Rajalakshmi, the



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mother of the claimant children and wife of the rider died enroute to the hospital. The vehicle which belonged to the sixth respondent herein was duly insured with the appellant. Claiming compensation for the minor children as well as the parents of the deceased, M.C.O.P.No.353 of 2013 was filed. The minor children were represented by their grandmother.

3.The grandparents examined themselves as P.W.1 and P.W.2. Exs.P1 to P9 were marked. One Gowthaman was examined as R.W.1. Copy of the insurance policy was marked as Ex.R1.

4.The learned Tribunal after consideration of the evidence on record held that the owner and the insurance company are jointly and severally liable to pay the claim. A sum of Rs.61,37,118/- was determined as compensation payable. Simple interest at the rate of 7.5% was awarded. The minor children were awarded a sum of Rs.28,00,000/- each. The grandparents were awarded a sum of Rs.1,00,000/- each. The husband was awarded a sum of Rs.3,37,118/-.



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5.The question that calls for consideration is whether the compensation awarded by the Court below is on the higher side.

6.The learned counsel for the insurance company submitted that the family of the deceased comprised her husband and the two children. Her parents were residing separately. Therefore, they cannot be taken as her dependents. Therefore, 1/3<sup>rd</sup> deduction towards personal expenses must have been taken. He further contended that the deceased ought not have travelled with four persons in the two wheeler. The deceased was also not wearing a helmet. Thus, there is contributory negligence on her part. The learned counsel relying on a catena of judgments submitted that 50% should be deducted towards contributory negligence.

7.Per contra, the learned counsel for the claimants submitted that the impugned order is well reasoned and that it does not call for interference. He pointed out that there is no evidence to show that the deceased was not wearing helmet. Relying on the decision of the Hon'ble Supreme Court reported in **2020 (1) TN MAC 161 SC (Mohammed Siddique Vs. National Insurance Company Limited)**, he



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contended that the question of contributory negligence will not arise in this case. He called upon this Court to sustain the impugned order and dismiss the civil miscellaneous appeal.

8.We carefully considered the rival contentions and went through the evidence on record. The deceased was aged about 44 years. Her monthly salary was Rs.38,922/-. The Court below had fixed her net annual income after deduction of income tax at Rs.4,43,012/-. Since she was a permanent government employee, future prospects also will have to be added. The quantification of Rs.5,76,916/- made by the Court below is correct.

9.The Court below however erred in including the father of the deceased as a dependent. In the decision reported in **(2009) 5 SCC 121 (Sarla Verma Vs. Delhi Transport Corporation)**, it was held that even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent. Thus, in this case, there were only three dependents. Hence, deduction towards personal and living expenses of the deceased should have been 1/3<sup>rd</sup>. Hence, after deducting



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1/3<sup>rd</sup> of her annual income, a sum of Rs.3,84,611/- is taken for calculating. Since the age of the deceased was 44 years, the applicable multiplier is “14”. The loss of dependency is Rs.53,75,216/-. Loss of consortium for the first respondent is Rs.15,000/-. Loss of love and affection for the claimants is Rs.60,000/-. Funeral expenses is Rs. 15,000/-.

10.The next question that calls for consideration is whether the deceased can be held guilty of contributory negligence. The learned counsel for the claimants relied on the decision reported on **(2020) 3 SCC 57 (Mohammed Siddique Vs. National Insurance Company Limited)**. Paragraph No.12 of the said judgment reads as follows:-

*“12. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. [Section 128](#) of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two wheeler motor cycle, not to carry more than one person on the motor cycle. [Section 194C](#) inserted by the Amendment Act 32 of 2019, prescribes a penalty*



*for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked.”*

11.In this case, admittedly, four persons had travelled in a two wheeler. The two wheeler is meant to carry only two persons. In ***Mohammed Siddique's*** case, the victim was one of the two pillion riders on a motor vehicle. He was thrown of the vehicle when a car hit the



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motor vehicle from the behind. Thus, there was no causal connection between the violation and the accident. That is not so in the case on hand. In the case on hand, no second vehicle was involved. The husband of the deceased applied sudden brake and as a result of which, there was skidding. The number of passengers / riders definitely contributed to the accident. The victim knew the risk involved. Therefore, the principle of contributory negligence can very well be invoked in this case. Though the learned standing counsel for the insurance company wanted us to reduce the compensation by 50% and also relied on quite a few decisions, we are of the view that in the facts and circumstances of the case, it would be in the fitness of things to reduce the compensation by 20% alone. As regards the contention that there should be further reduction, since the deceased was not wearing helmet, we are of the view that in the absence of evidence, this contention does not deserve to be considered.

12.In the result,

*(i) The appellant is directed to deposit a sum of Rs.43,79,644/- by way of compensation to the credit of M.C.O.P.No.353 of 2013 on the file of the Principal District*



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*Court / Motor Accidents Claims Tribunal, Karur within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited.*

*(ii) Simple interest at the rate of 7.5% per annum from the date of petition till the date of payment is awarded.*

*(iii) The first respondent shall take a sum of Rs.19,00,000/-.*

*(iv) The minor second respondent shall take a sum of Rs.19,00,000/-.*

*(v) The third respondent / mother of the deceased shall take a sum of Rs.2,00,000/-.*

*(vi) The fifth respondent / husband of the deceased shall take a sum of Rs.3,79,644/-.*

*(vii) The entire interest and costs shall be added to the share of the claimants 1 and 2.*

*(viii) The other condition given by the Court below regarding withdrawal stands confirmed.*



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12.The judgment of the court below is modified accordingly and the civil miscellaneous appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

**(G.R.S. J.) & (R.P. J.)**  
**09.12.2024**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes/ No  
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To:-

The Motor Accident Claims Tribunal,  
Principal District Court, Karur.

Copy to:

The Section Officer,  
ER/VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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and  
R.POORNIMA, J.**

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