



C.M.A(MD)No.104 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.02.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.104 of 2021

and

C.M.P(MD)Nos.914, 9200 & 9201 of 2021

The Cholamandalam
M/S.General Insurance Co., Ltd.,
represented by its Branch Manager,
No.3 & 4, Dindigul Road,
Near ENT Hospital,
Kalavasal,
Madurai-16.

: Appellant/2nd Respondent

Vs.

1.Shenbagavalli

2.Minor.Balaji

(Minor 2nd respondent represented
through his mother and natural
guardian 1st respondent herein)

: Respondents 1 & 2/
Petitioners

3.Meera Hussain

: 3rd Respondent/
1st Respondent



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PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree, dated 26.04.2019 made in M.C.O.P.No.298 of 2015, on the file of the Special District Judge/Motor Accident Claims Tribunal (In-charge), Madurai.

For Appellant : Mrs.K.R.Shivashankari

For R1& R2 : Mr.D.Thiruppathi

For R3 : Ex-parte

JUDGMENT

[Judgment of the Court was made by **K.K. RAMAKRISHNAN .J.**]

The appellant Insurance Company, aggrieved by the award passed by the Special District Judge/Motor Accident Claims Tribunal (In-charge), Madurai in M.C.O.P.No.298 of 2015, dated 26.04.2019, has preferred this appeal, questioning the negligence fixed on the appellant.



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2. The appellant Insurance Company is the second respondent in M.C.O.P.No.298 of 2015, on the file of the Motor Accident Claims Tribunal (Special District Judge), Madurai. The respondents 1 & 2 are the claimants and the third respondent is the owner of the tipper lorry, who was set ex-parte before the Tribunal. The respondents 1 & 2 filed the claim petition in M.C.O.P.No.298 of 2015, claiming a sum of Rs.60,00,000/-(Rupees Sixty Lakhs Only) as compensation for the death of Vairavasundaram, who is the husband of the first respondent and father of the second respondent, for the accident that occurred on 03.01.2015. By the award, dated 26.04.2019, the Tribunal awarded a sum of Rs.40,67,408/- as compensation.

3.Facts of the Case:-

According to the respondents 1 & 2, on 03.01.2015 at about 10.00 p.m., when the deceased was riding his two-wheeler bearing registration No.TN-59-PX-4902 near Kottampatti exit on Madurai - Trichy Four-land road, the appellant insured tipper lorry bearing Registration No.TN-59-PX-1033 driven by its driver in a rash and negligent manner, hit behind the two-wheeler and hence, the deceased



suffered severe head injury and died on the spot. A case has been registered against the first respondent in Cr.No.3/2015 for an offence under Section 304-A of IPC.

3.1.The deceased was aged about 43 years, he was working as Grade-I, constable and he was earning a sum of Rs.30,200/- as monthly income. Therefore, the respondent Nos.1 and 2 filed a petition in M.C.O.P.No. 298 of 2015 claiming a sum of Rs.60,00,000/- as compensation.

4.Resisting the claim petition, the appellant filed a counter and has taken the plea that the rider of two-wheeler did not have any valid driving licence at the time of accident and he was not wearing the helmet as per Section 129 of the Motor Vehicles Act and hence, contributory negligence has to be fixed on the rider of the two-wheeler.

5. Before the Tribunal, on the side of the claimants P.Ws.1 & 2 were examined and Ex.P1 to Ex.P17 were marked. On the side of the respondents, one Seenivasan was examined as R.W.1 and Ex.R1 to Ex.R13 were marked.



WEB COPY **6. Finding of the Tribunal**

The Tribunal after considering the oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the lorry and hence, fixed 75% liability on the driver of the lorry. Further, held that the rider of the two-wheeler (deceased) did not have any valid driving licence at the time of accident and he has not worn the helmet, and therefore, contributory negligence 25% has been fixed on the deceased and awarded compensation of Rs.40,67,408/- along with interest at the rate of 7.5% p.a., and directed the appellant and the third respondent to pay 75% award amount jointly and severally. The details of the compensation of the Tribunal are as follows:

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Loss of Income	39,57,408/-
2	Loss of consortium for first claimant	40,000/-
3	Loss of Love and affection	40,000/-
4	Funereal Expenses	15,000/-
5	Transportation	15,000/-
<i>Total</i>		<i>40,67,408/-</i>



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Aggrieved against the said award, dated 26.04.2019, the appellant-Insurance Company has filed the present appeal challenging the liability only.

7. Submission of the learned counsel for the appellant

(i) The learned counsel for the appellant submitted that the Tribunal, without properly considering the evidence adduced before the Court, fixed the liability against the appellant when the involvement of the insured vehicle itself is not proved by the claimants. He would further submit that the Tribunal erroneously relied the testimony of P.W.2, when he himself admitted that he came to know about the accident only after hearing the sound at a distance.

(ii) The learned counsel further submitted that the Tribunal awarded exorbitant amount of **Rs.40,67,408/-** without following the guidelines issued by the Hon'ble Supreme Court.

8.Submission of the learned counsel for the respondent:

Per contra, the learned counsel appearing for the respondents/claimants argued that the impugned order awarding the



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aforesaid compensation is well reasoned and it requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

9. We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondents 1 & 2 and also perused all the materials available on record.

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

10.1. Whether the Court below is correct in holding that the appellant insured tipper lorry bearing registration No.TN-57-PX-1033 is involved in the accident that happened on 03.01.2015 and its driver drove the said vehicle in a rash and negligent manner and hit the deceased?;

10.2. Whether the learned Tribunal Judge correctly quantified the compensation in accordance with law?.

11. Plea of false implication of the vehicle:

The learned counsel for the Insurance Company submitted that the insured vehicle was falsely implicated in this accident. According to the



learned counsel, the occurrence happened in the presence of P.W.2 is doubtful and hence, he sent a representation to the Superintendent of Police to enquire into this matter after filing counter in the M.C.O.P.No.298 of 2015. The said contention of the learned counsel appearing for the appellant/Insurance Company that the vehicle has been falsely implicated in this case is not acceptable for the following reasons:

(i) Neither the owner of the vehicle nor the driver of the vehicle have appeared and disputed the involvement of the vehicle.

(ii) P.W.2 gave evidence about the involvement of the vehicle. He deposed that on 03.01.2015 at 10.00 p.m., on Madurai-Trichy four way high road when the deceased was riding his two wheeler bearing registration No.TN59PX4902 on the extreme left side of the Madurai-Trichy four way high road, the insured tipper lorry bearing registration No.TN 59 PX 1033 came behind him in a rash and negligent manner, and hit the deceased pulling him down into the pit. In the result, he sustained injury and died in the spot. In the cross examination he re-affirmed the same, that when he was riding his two wheeler, the lorry overtook him and he heard the sound and hence, he had seen the accident. In the said circumstances, the learned trial Judge believed his evidence, rejecting the contention of the Insurance Company that his testimony has to be disbelieved for the reason that he has not



reported before the respondent police. There is no rule of evidence that his evidence has to be disbelieved on the ground that he has not appeared and given the complaint before the jurisdictional police officer and the same is fortified by the law laid down by the Hon'ble Supreme Court in the case of **Anita Sharma v. New India Assurance Co. Ltd.**, reported in (2021) 1 SCC 171 at page 179

16. It is quite natural that such a person who had accompanied the injured to the hospital for immediate medical aid, could not have simultaneously gone to the police station to lodge the FIR. The High Court ought not to have drawn any adverse inference against the witness for his failure to report the matter to the police. Further, as the police had themselves reached the hospital upon having received information about the accident, there was perhaps no occasion for AW 3 to lodge a report once again to the police at a later stage either.

17. Unfortunately, the approach of the High Court was not sensitive enough to appreciate the turn of events at the spot, or the appellant-claimants' hardship in tracing witnesses and collecting information for an accident which took place many hundreds of kilometres away in an altogether different State. Close to the facts of the case in hand, this Court in Parmeshwari v. Amir Chand [Parmeshwari v. Amir Chand, (2011) 11 SCC 635 : (2011) 4 SCC (Civ) 828 : (2011) 3 SCC (Cri) 605] , viewed that : (SCC p. 638, para 12)



“12. The other ground on which the High Court dismissed [Amir Chand v. Parmeshwari, 2009 SCC OnLine P&H 9302] the case was by way of disbelieving the testimony of Umed Singh, PW 1. Such disbelief of the High Court is totally conjectural. Umed Singh is not related to the appellant but as a good citizen, Umed Singh extended his help to the appellant by helping her to reach the doctor's chamber in order to ensure that an injured woman gets medical treatment. The evidence of Umed Singh cannot be disbelieved just because he did not file a complaint himself. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim.

(emphasis supplied)

11.2.P.W.2 was subjected to the incisive cross examination, but, no adverse material was elicited to disbelieve his evidence. Further according to the investigating officer in the criminal case, the investigation was conducted and the involvement of the vehicle was ascertained apart from examining P.W.2. The said final report was not challenged either by the owner of the vehicle, driver or insurance company. The Hon'ble Supreme Court while deciding the similar question whether the vehicle was involved in the accident or not directed the



Courts to take a holistic view. When the claimant was not present in the place of occurrence, he might not be aware of the details as to how the accident took place. Therefore the investigating agency's report is to be considered. The Hon'ble Supreme Court in the case of ***Bimla Devi v. Himachal RTC***, reported in **(2009) 13 SCC 530 at page 534**

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. “It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants”. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.



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11.3.The said view also was followed and reiterated by the following judgements of the Hon'ble Supreme Court:

*In the case of **Dulcina Fernandes v. Joaquim Xavier Cruz**, reported in (2013) 10 SCC 646 at page 650*

8. In United India Insurance Co. Ltd. v. Shila Datta [(2011) 10 SCC 509 : (2012) 3 SCC (Civ) 798 : (2012) 1 SCC (Cri) 328] while considering the nature of a claim petition under the Motor Vehicles Act, 1988 a three-Judge Bench of this Court has culled out certain propositions of which Propositions (ii), (v) and (vi) would be relevant to the facts of the present case and, therefore, may be extracted hereinbelow : (SCC p. 518, para 10)

“10. (ii) The rules of the pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo motu initiated by the Tribunal.

(v) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. ...



(vi) *The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry.”*

9. *The following further observation available in para 10 of the Report would require specific note : (Shila Datta case [(2011) 10 SCC 509 : (2012) 3 SCC (Civ) 798 : (2012) 1 SCC (Cri) 328] , SCC p. 519)*

“10. ... We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute.”

In the case of ***Mangla Ram v. Oriental Insurance Co. Ltd., (2018) 5 SCC 656 at page 667***

22. *The Court restated the legal position that the claimants were merely to establish their case on the touchstone of preponderance of probability and standard of proof beyond reasonable doubt cannot be applied by the Tribunal while dealing with the motor accident cases. Even in that case, the view taken by the High Court to reverse similar findings, recorded by the Tribunal was set aside.*



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11.4. It is well settled in the motor accident claims, the standard of proof is one of the preponderance of the probabilities, rather than beyond reasonable doubt. When the insurance company took a plea that the vehicle is not involved, it is the duty of the insurance company to examine the driver of the tipper lorry to deny the said occurrence. when the investigating agency filed the final report against the tipper lorry, it is the duty of the insurance company to prove the non-involvement of the vehicle by examining the driver of the vehicle and other witnesses. But, in this case, neither driver nor any witness was examined to disprove the factum of involvement of the vehicle. Even though, the Insurance Company had submitted a representation to the Superintendent of Police suspecting involment of the vehicle , that too, after filing the counter before the Tribunal, there was no further action and there was no contra finding available in the final report about the involvement of the vehicle.

11.5. In this case, in compliance with the above principles, as discussed above, the claimant proved the involvement of the vehicle by examining P.W.2 and through the final report filed against the driver of



the lorry, which was marked as Ex.R.11. Without any contra evidence, the claimant discharged his burden of proving the case on the principle of preponderance of probabilities. Therefore, the argument of the learned counsel for the insurance company that the vehicle was falsely implicated in this case deserves to be rejected. Hence, this Court concurs with the finding of the learned trial judge that the appellant insured tipper lorry bearing registration No.TN-59-PX-1033, driven by his driver in a rash and negligence manner hit behind the deceased two wheeler bearing registration No.TN-59-PX-4902 thereby pulling him down into the pit. It is settled principle when the Tribunal considered the evidence in a proper manner, this Court has jurisdiction to interfere with the order unless it is perverse, which is not found in this case.

12. Plea of delay in registering the case

The learned counsel for the insurance company submitted that the delay in registering the FIR itself shows that the vehicle was falsely implicated. But, this Court is unable to accept the said submission that the delay in registering the FIR is a ground to dismiss the claim petition as per the Judgment of the Hon'ble Supreme Court in



RAVI V/S BADRINARAYAN & ORS reported in **2011(1) TNMAC 326.**

The Hon'ble Supreme Court held as follows:-

“[20] It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.

[21] The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly



proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.”

The Hon'ble Supreme Court in the above stated judgment has held that the delay in registering the case is not a ground to disbelieve the evidence adduced before tribunal to prove case of claimant. In this case, P.W.2 categorically deposed before the Court about the involvement of the vehicle and manner of the accident.



13. Finding of Contributory Negligence:

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It is seen from the judgment of the Tribunal that a specific finding has been given by the Tribunal that the accident has taken place due to the rash and negligent driving by driver of the tipper lorry. On independent reading of the evidence of P.W.2 coupled with the documentary evidence of Ex.P1-FIR, the learned Tribunal Judge, considering the fact that the deceased rode the two wheeler, without licence and without wearing of helmet and he sustained severe head injuries, correctly fixed 25% contributory negligence on his part. This Court finds no reason to differ with the said finding of fixing contributory negligence of 75% upon the driver of the insured tipper lorry and 25% on the deceased. we find no perversity or illegality warranting interference in the findings of the tribunal and hence, the appellant Insurance company is liable to pay 75% compensation.

14. Discussion on quantum

On the point of quantum of compensation, it is seen that the deceased was working as Grade-I Police Constable and aged about 43 years and his salary certificate was marked as Ex.P8. As per Ex.P8 his



salary is Rs.30,200/- and there was no contrary evidence adduced to disbelieve the above monthly income. Hence, this Court fixes the monthly income of the deceased as Rs.30,200/-.

(i) As per the **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]**, 30% future prospect is to be taken, which is calculated as follows: $30,200/- \times 30/100 = 9,060/-$ and hence, his total monthly income comes around Rs.39,260/-.

(ii) His yearly income comes around $\text{Rs.}39,260 \times 12 = 4,71,120/-$ and hence, it comes under the 10% income tax slab. Therefore, 10% is deducted and his income comes around Rs.4,24,008/-.

(iii) As per the case reported in **2009(2) TN MAC 1 (SC) (Smt. Sarla Verma and Others Vs. Delhi Transport corporation and another)** the proper multiplier is 14 and proper deduction for his personal expenditure is $1/3$. Hence, the loss of income is calculated as follows:

$$\text{Rs.}4,24,008/- \times 2/3 \times 14 = \text{Rs.}39,57,408/-$$

In view of the above discussion, the tribunal correctly calculated the loss of income.



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14.1.Further, the Tribunal has rightly awarded a sum of Rs.1,10,000/- as general damages under the conventional following heads:

Loss of consortium	=Rs.40,000/-
Love and affection	= Rs.40,000/-
Funeral expenses	= Rs.15,000/-
Transport expenditure	= Rs.15,000/-

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

15. Conclusion

In the light of the above said discussion, claimants would be entitled to claim the following amounts as compensation under the various heads enumerated hereunder:



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S. No.	Under the head	a) Calculation	b) Amount in Rupees
1	Monthly income (monthly income + future prospects 10%)	Rs.30,200/- X 30/100 = Rs.9,060/-	39,620/-
2.	Deduction of 1/3 for his personal expenses	Rs.39,57,408 – Rs.1,41,336 = Rs.2,82,672/-	2,82,672/-
3	Annual Loss of Income	Rs.36,260 X 12 = Rs.4,71,120/-	4,71,120/-
4	Loss of Income after applying the multiplier “14”	Rs.2,82,672 X 14 =Rs.39,57,408/-	39,57,408/-
5	Compensation		Amount in Rupees
	a) Loss of Income		39,57,408/-
	b) Loss of consortium		40,000/-
	c) Loss of Love and affection		40,000/-
	d) Funeral Expenses		15,000/-
	e) Transportation		15,000/-
Total			40,67,408/-

16. Accordingly, this Civil Miscellaneous Appeal is dismissed and the judgment and award passed by the learned Special District Judge/ Motor Accident Claims Tribunal (In-charge), Madurai in M.C.O.P.No.298



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of 2015 dated 26.04.2019 is confirmed. The appellant is directed to deposit the award amount with proportionate accrued interest and costs, less the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1 & 2 are entitled to withdraw their award amount as per order and apportionment made by the Tribunal by filing necessary application before the tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

(V.B.S.J.,) (K.K.R.K.J.,)
23.02.2024

Index: Yes/No
Internet: Yes/No
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To

1. The Special District Judge/
Motor Accident Claims Tribunal
(In-charge), Madurai.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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**V.BHAVANI SUBBAROYAN.J.,
and
K.K. RAMAKRISHNAN.J.,**

am/sbn

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Dated:23.02.2024