



C.M.A(MD)No.382 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.07.2024**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.382 of 2017

and

C.M.P(MD)No.4122 of 2017

The Branch Manager,
United India Insurance Company Ltd.,
No.3/33-B, P.P.K Building,
Main Road, Marthandam Post,
District Head Office, Nagercoil,
Vilavancode Taluk,
Kanyakumari District.

... Appellant/3rd Respondent

Vs.

1.K.Rajeswari

2.D.R.Selvin

3.D.R.Libin

4.Neelammal

... Respondents/Petitioners

5.R.Gopi

6.S.Rajendran

... Respondents/Respondents 1&2

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the fair and decreetal order of the Motor



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Accident Claims Tribunal cum Chief Judicial Magistrate, Nagercoil
made in M.C.O.P.No.6 of 2014, dated 19.02.2015.

For Appellant : Mr.C.Jawahar Ravindran

For R1 - R5 : No Appearance

For R6 : Mr.P.Senrayar

JUDGMENT

The present appeal has been filed by the Insurance Company challenging the award passed in M.C.O.P.No.6 of 2014, on the file of the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate, Nagercoil, on the grounds of non-consideration of the plea of contributory negligence and the quantum of award.

2. According to the claimants, the deceased was riding a two wheeler on 10.10.2012 from Vettumony to Marthandam. At the relevant point of time, the lorry owned by the second respondent and insured with the third respondent came from the opposite direction, which was driven in a rash and negligent manner, dashed against the two wheeler. Due to the said impact, the rider of the two wheeler had sustained grievous injuries and died on the spot. The claimants have prayed for a sum of Rs.27,00,000/- towards compensation.



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3. The Insurance Company has filed a counter contending that the accident has taken place in the middle of the road and therefore, contributory negligence should be fixed upon the rider of the two wheeler at 50%. The Insurance Company has further contended that the claimants have to prove that the deceased had a valid and effective driving license at the time of accident.

4. The Tribunal, after considering the oral and documentary evidence, has arrived at a finding that the accident had taken place only due to the rash and negligent driving on the part of the driver of the lorry. The Tribunal has fixed the notional monthly income at Rs.15,000/- per month and applying multiplier of “14”, had arrived at a sum of Rs.16,80,000/- under the head of loss of income. Though the Tribunal has awarded amount under various heads, rejected the request for the award of amount under the head of future prospects. Finally, a sum of Rs.18,72,000/- was awarded. Challenging the same, the present appeal has been filed.

5. According to the learned counsel appearing for the appellant, since the accident had taken place in the middle of the road, the Tribunal



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ought to have fixed 50% of contributory negligence on the part of the rider of the two wheeler.

6. When the appeal was listed on 10.07.2024, there was no representation on the side of the claimants. Even today, there is no appearance on the side of the claimants. Therefore, this Court is passing orders on merits after hearing the submissions of the learned counsel for the appellant.

7. A perusal of the record indicates that the lorry had dashed against the two wheeler and thereafter, the rider of the two wheeler had fallen down. The lorry had not stopped even after the said impact and has proceeded further. Therefore, the rider of the two wheeler had gone under the rear wheel of the lorry and his head was crushed and he had died on the spot. Therefore, it is clear that the driver of the lorry had not stopped the vehicle even after hitting the two wheeler. Therefore, the Tribunal was right in fixing the entire negligence upon the driver of the lorry.



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8. As far as the quantum is concerned, the claimants have contended that the deceased was working as a Brick Maker and Supervisor. They have examined the employer to prove that he was earning a sum of Rs.20,500/- per month. The Tribunal has taken the notional monthly income of the deceased at Rs.15,000/- per month.

9. This Court is of the considered opinion that the notional income could be fixed at Rs.10,000/- per month. The Tribunal has rejected the request for adding future prospects on the ground that there is no possibility of future prospects of the deceased. Such a finding is erroneous. Considering the age of the deceased at the time of accident i.e., 42 years, this Court is inclined to add 25% of the monthly income towards future prospects. Each one of the claimants are entitled to a sum of Rs.40,000/- (Rupees Forty Thousand only) towards loss of love and affection. Therefore, the award of the Tribunal is reassessed as follows:

10. The notional monthly income is fixed at Rs.10,000/- and 25% is added towards future prospects. Therefore, the total notional income would be Rs.12,500/-. After deducting $1/3^{\text{rd}}$ towards personal expenses, the total notional monthly income would be Rs.8,334/-. Applying the



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multiplier of 14, the loss of income would be Rs.14,00,112/- (Rs. 8334x12x14).

Loss of income	= Rs.14,00,112/-
Loss of love & affection	= Rs. 1,60,000/- (40,000x4)
Funeral expenses	= Rs. 20,000/-
Transport charges	= Rs. 10,000/-
Loss of estate	= Rs. 15,000/-
Total	= Rs.16,05,112/-

11. The award of the tribunal is reduced from Rs.18,72,000/- (Rupees Eighteen Lakh and Seventy Two Thousand only) to Rs. 16,05,112/- (Rupees Sixteen Lakh Five Thousand One Hundred and Twelve only). If any excess amount is deposited by the insurance company, the same shall be refunded along with accrued interest.

12. Considering the fact that the deceased person was not wearing a helmet and not having driving license, following the judgment of the Hon'ble Division Bench of our High Court in **2022 (1) TN MAC 794 (DB) (Manager, Cholamandalam MS General Insurance Co.Ltd., Vs. Nagarathinamma & Others)**, 10% is deducted towards contributory



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negligence. Therefore, a sum of Rs.14,44,601/- (Rs.16,05,112 – Rs.1,60,511) is awarded. On such deposit, 1st claimant is entitled to withdraw 40% of the award amount and 2nd & 3rd claimants are entitled to withdraw 20% of the award amount each and 4th claimant is entitled to withdraw 20% of the award amount along with accrued interest.

13. This Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

16.07.2024

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

- 1.The Motor Accident Claims Tribunal cum
Chief Judicial Magistrate,
Nagercoil.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
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