



C.M.A.(MD) No.786 of 2018 &  
Cros.Obj(MD)No.5 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2024

CORAM

**THE HON'BLE MR.JUSTICE SUNDER MOHAN**

**C.M.A.(MD) No.786 of 2018**  
**and**  
**Cros.Obj (MD)No.5 of 2023**

In C.M.A.(MD)No.786 of 2018:

The National Insurance Co. Ltd.,  
Anguvilas Building,  
North Car Streets,  
Nagercoil Village,  
Agastheeswaram Taluk,  
Kanyakumari.  
Represented by its Branch Manager.

... Appellant

Vs.

1.Mallika,  
2.Laila,  
3.Ranjith,  
4.Neelarajan.  
5.Rengasamy.

... Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 24.07.2015 passed in M.C.O.P.No.2 of 2014, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate), Nagercoil.



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For Appellant : Mr.S.Srinivasa Raghavan

For Respondents

for R1 to R3: Mr.C.Sankar Prakash

for R4 : Dismissed

for R5 : No appearance

In Cros.Obj (MD)No.5 of 2023:

1.Mallika,

2.Laila,

3.Ranjith.

... Appellants

Vs.

1.The National Insurance Co. Ltd.,

Anguvilas Building,

North Car Streets,

Nagercoil Village,

Agastheeswaram Taluk,

Kanyakumari.

Represented by its Branch Manager.

2.Neelarajan.

3.Rengasamy.

... Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Order XLI Rule 22 of C.P.C. to allow this cross objection and enhance the award amount in the judgement and decree dated 24.07.2015 passed in M.C.O.P.No.2 of 2014, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate), Nagercoil.



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For Appellants : Mr.C.Sankar Prakash

For Respondents

for R1 : Mr.S.Srinivasa Raghavan

for R2 : Dismissed

for R3 : No appearance

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### **COMMON JUDGMENT**

C.M.A.(MD)No.789 of 2018 has been filed by the Insurance Company challenging the finding on liability and quantum of compensation. The claimants have filed the cross objection in Cro.Obj. (MD)No.5 of 2023 seeking enhancement of the compensation.

2. For the sake of convenience, the parties are referred to as per their ranking in C.M.A.(MD)No.786 of 2018.

3. The respondents 1 to 3/claimants filed a claim petition stating that while the deceased was travelling as a pillion rider, the rider of the two wheeler rode the two wheeler in a rash and negligent manner and dashed against a tree, as a result of which the deceased sustained fatal injuries.



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4. The respondents 4 and 5 herein, who were shown as the respondents 1 and 2 before the Tribunal, remained *ex parte* before the Tribunal.

5. The appellant filed a counter denying the averments made in the claim petition and submitted that the accident did not take place in the manner alleged by the claimants; and that the rider of the two wheeler did not have a valid licence.

6. Before the Tribunal, the claimants examined P.W.1 to P.W.3 and marked Exs.P1 to P17. The appellant examined R.W.1 and marked Exs.R1 to R4.

7. The Tribunal, after taking into consideration the oral and documentary evidence, held that the rider of the two wheeler, which was insured with the appellant, did not have a valid licence; that the accident took place only due to the negligence of the rider of the two wheeler; that the appellant is liable to pay compensation of Rs.13,82,000/-; and that since the rider did not have a valid licence, the appellant is liable to pay



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the compensation and recover it from the owner and rider of the two wheeler/respondents 4 and 5 herein.

8. The learned counsel for the appellant/Insurance Company submitted that the rider of the two wheeler did not have a valid licence and hence, they are not liable to pay any compensation; and that in any case, the compensation awarded by the Tribunal is excessive and hence prayed for setting aside the award.

9. The learned counsel for the respondents 1 to 3/cross objectors/claimants, per contra, submitted that the award of the Tribunal, holding that the appellant is liable to pay compensation and directing the appellant to recover it from the owner and rider of the two wheeler, cannot be faulted; and that the compensation awarded by the Tribunal has to be enhanced in view of the evidence on record.

10. Though notice sent to the fifth respondent has been served and the name is printed in the cause list, none has entered appearance. The appeal was dismissed by this Court vide order dated 14.11.2019, as



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against the fourth respondent/rider of the two wheeler.

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11. The points for consideration in the instant appeal are as follows:

*'a. Whether the appellant is liable to pay the compensation awarded by the Tribunal?*

*b. Whether the quantum of compensation awarded by the Tribunal is just and reasonable?'*

12. As regards the first point, it is seen that though the appellant had pleaded before the Tribunal that the rider of the two wheeler did not have a valid licence, no evidence has been let in to substantiate their plea. Though R.W.1, the official employee under the appellant, deposed that the rider of the two wheeler did not have a valid licence, the appellant had not examined RTO officials to prove that no licence was granted to the rider of the two wheeler. In such circumstances, this Court is of the view that it cannot be presumed that the rider did not have a valid licence. Therefore, this Court finds that the finding of the Tribunal granting permission to the appellant to pay and recover also cannot be sustained. It is fairly conceded



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by the learned counsel that the appellant had not challenged the finding regarding negligence. Hence, this Court is of the view that the appellant would be liable to pay compensation.

13. Further, though the owner of the two wheeler has not preferred any appeal, this Court, in exercise of its power under Order XLI Rule 33 of C.P.C., holds that the appellant is liable to pay compensation as the violation of the policy condition has not been established. Point No.1 is answered accordingly.

14. As regards the quantum, this Court is of the view that the claimant had examined P.W.3/employer of the deceased, which would show that he was earning Rs.15,000/- per month and was also earning daily batta at Rs.70/-. The said certificate was issued by P.W.3/employer of the deceased in his letter pad. There is no other document to substantiate his version. The claimant had also established that the deceased was a bright student and marked Ex.P12-consolidated mark statement to show that he had secured almost 80% in his diploma examination and that he was a diploma holder in Automobile Engineering.



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Considering the above fact and the age of the deceased at the time of accident, this Court is of the view that the notional income of the deceased can be fixed at Rs.12,000/- p.m. 40% has to be added towards future prospects. The multiplier applicable is '18'. Since the deceased was a bachelor, 50% has to be deducted towards the personal expenses. Hence, the compensation under the head 'loss of income' has to be Rs.12,000/- + Rs.4,800/- (40%) x 12 x 18 x ½ = Rs.18,14,400/-.

15. The first respondent is the mother and the respondents 2 and 3 are sisters of the deceased. Hence, each are entitled to Rs.40,000/- towards 'loss of consortium'. Hence, the award under the head 'loss of consortium' is reduced from Rs.1,50,000/- to Rs.1,20,000/-. The compensation under the other heads is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

| <b>Sl. No</b> | <b>Description</b>     | <b>Amount awarded by the Tribunal</b> | <b>Amount awarded by this Court</b> | <b>Award confirmed, enhanced or granted</b> |
|---------------|------------------------|---------------------------------------|-------------------------------------|---------------------------------------------|
| 1             | Loss of income         | Rs.10,80,000/-                        | Rs.18,14,400/-                      | Enhanced                                    |
| 2             | Medical expenses       | Rs. 1,22,000/-                        | Rs. 1,22,000/-                      | Confirmed                                   |
| 3             | Damages to clothes     | Rs. 3,000/-                           | Rs. 3,000/-                         | Confirmed                                   |
| 4             | Transportation charges | Rs. 2,000/-                           | Rs. 2,000/-                         | Confirmed                                   |



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|              |                                       |                       |                       |                                  |
|--------------|---------------------------------------|-----------------------|-----------------------|----------------------------------|
| 5            | Funeral expenses                      | Rs. 25,000/-          | Rs. 25,000/-          | Confirmed                        |
| 6            | Loss of love and affection/consortium | Rs. 1,50,000/-        | Rs. 1,20,000/-        | Reduced                          |
| <b>Total</b> |                                       | <b>Rs.13,82,000/-</b> | <b>Rs.20,86,400/-</b> | <b>Enhanced by Rs.7,04,400/-</b> |

16. The appellant in C.M.A.(MD)No.786 of 2018/Insurance Company is directed to pay the enhanced compensation of **Rs.20,86,400/-** (Rupees Twenty Lakhs Eighty Six Thousand and Four Hundred 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.

17. On such deposit, the respondents 1, 2 and 3 in C.M.A. (MD)No.786 of 2018/claimants are permitted to withdraw 80%, 10% and 10% of the award amount, respectively, with proportionate interest and costs, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.



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18. In the result, the Cross Objection in Cros.Obj(MD)No.5 of 2023 is partly allowed and the Civil Miscellaneous Appeal in C.M.A. (MD)No.786 of 2018 is dismissed. No costs.

**19.10.2024**

Index: Yes/ No  
NCC: Yes / No  
Speaking Order / Non-Speaking Order  
apd

To:

1. The Motor Accidents Claims Tribunal, Chief Judicial Magistrate),  
Nagercoil.

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



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**SUNDER MOHAN, J.**

apd

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