



C.M.A.(MD) No.641 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.641 of 2024

and

C.M.P.(MD) No.7793 of 2024

The United India Insurance Company Limited,
Represented by its Divisional Manager,
Divisional Office, P.P.K. Building,
Main Road, Marthandam Post,
Vilavancode Taluk, Nalloor Village,
Kanyakumari District - 629 165.

... Appellant

Vs.

1.Asharafa
W/o.Ismail

2.Arshitha
D/o.Ismail

3.Al Bashith (Minor)
S/o.Ismail

4.Thasleema Banu.A. (Minor)
D/o.Ismail

5.Saiunulaftheen
S/o.Hasanar Pillai

Nabisath Beevi (Died)
W/o.Sainulaftheen



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6.K.Sunil
S/o.Krishnan Nair

7.S.Stanly John
S/o.M.Siva Sankaran

8.Bajaj Allianz General Insurance Company Limited,
184/25, K.P.S. Shopping Arcade,
Bye Pass Road, Madurai - 625 010.

9.Siluvaidesan
S/o.Panipichal

10.Tredis
S/o.John Bosco

11.Albert Jain
S/o.Alphonse

... Respondents

[R1 to R5 were recorded as legal heirs of the Nabisath Beevi as per the order dated 28.04.2021 passed in I.A.No.1/2021]

[R3 & R4 were recorded as major and R1 was discharged from guardian of R3 & R4 as per the order dated 30.10.2019 in I.A.Nos.1 & 2 of 2019]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree passed in M.C.O.P.No.113 of 2015 dated 06.04.2023 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Kuzhithurai.

For Appellant : Mr.J.S.Murali

For R1 to R5 : Mr.T.Antony Arul Raj



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For R8 : Mrs.K.R.Shivashankari

For R11 : Mr.N.Kamesh

J U D G M E N T

The instant appeal has been filed challenging the finding on negligence and the quantum of compensation awarded by the Motor Accident Claims Tribunal [Subordinate Court], Kuzhithurai, *vide* Judgment and Decree dated 06.04.2023 passed in M.C.O.P.No.113 of 2015.

2. The first to fifth respondents filed a claim petition before the Tribunal, stating that on 28.04.2015 at about 07.00 a.m., while the deceased was riding a two-wheeler bearing Registration No.TN-74-V-0483 by following the traffic rules, a pulsar bike bearing Registration No.TN-75-E-0618 came in the opposite direction and collided with the two-wheeler ridden by the deceased, as a result of which the deceased fell down on the main road, and thereafter, a tipper lorry bearing Registration No.TN-75-E-2111 insured with the eighth respondent, which came in a rash and negligent manner, ran over the deceased, causing the death of the deceased.



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3. Initially, the claim petition was filed against the driver, the owner, and the insurer of the tipper lorry and thereafter, the rider, the owner, and the insurer of the offending two-wheeler and also the RC book owner of the two-wheeler ridden by the deceased were added as parties.

4. The appellant filed a counter before the Tribunal, stating that the accident did not take place due to the negligence of the rider of the two-wheeler and that the accident took place only due to the negligence of the driver of the insured tipper lorry.

5. The other respondents also denied the averments made in the claim petition and submitted that in any case, the compensation claimed was excessive.

6. Before the Tribunal, the claimants examined P.W.1 and P.W.2 and marked Exs.P1 to P39. The eighth respondent herein, the insurer of the tipper lorry, examined R.W.1 and marked Ex.R1.

7. The Tribunal, after taking into consideration the oral and documentary evidence, held that both the rider of the offending two-



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wheeler and the driver of the tipper lorry were guilty of negligence, apportioned contributory negligence at 50% each on both parties, and arrived at a compensation of Rs.29,42,500/- payable to the claimants.

8. The learned counsel for the appellant, the insurer of the offending two-wheeler, submitted that the appellant would not be liable to pay any compensation, since as per the claim petition, the liability was fixed on the driver of the tipper lorry; that in any case, the manner of the accident would suggest that the rider of the two-wheeler cannot be made equally guilty of contributory negligence; and that as regards the quantum of compensation, the notional income fixed at Rs.20,000/- per month, in the absence of proof of income, is excessive, and prayed for reduction of the compensation.

9. The learned counsel for the eight respondent, the insurer of the tipper lorry, submitted that both the lorry driver and the rider of the two-wheeler were made as accused in the final report filed by the police in the criminal case, and therefore, the contributory negligence apportioned by the Tribunal is in accordance with law and no interference is called for. The learned counsel for the eight respondent, the insurer of the tipper



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lorry, further submitted that the compensation awarded by the Tribunal, in any case, is excessive.

10. The learned counsel for the first to fifth respondents/claimants, per contra, submitted that the compensation requires to be enhanced since the Tribunal had not taken into consideration the future prospects and prayed for enhancement of the compensation.

11. The points for consideration in the instant appeal are: (a) whether the finding on negligence by the Tribunal is justified; and (b) whether the compensation awarded by the Tribunal is just and reasonable.

12. As regards the first point, it is seen that neither the appellant nor the eighth respondent have produced any evidence to prove the manner of the accident. On the other hand, the claimants examined P.W.2, the eyewitness to the occurrence, and marked Ex.P37, the final report filed by the police in the criminal case. As per the evidence of P.W.2, the rider of the two-wheeler insured with the appellant, Insurance Company, came in a rash and negligent manner and collided with the two-wheeler ridden by the deceased, which resulted in the deceased falling down from his two-



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wheeler, and thereafter, he was run over by the tipper lorry. The police, after the investigation, filed the final report (Ex.P37), which corroborates the evidence of P.W.2. Thus, it is seen from the evidence of P.W.2 and the final report (Ex.P37) filed by the police in the criminal case that both the rider of the two-wheeler and the driver of the tipper lorry had contributed to the accident.

13. The question is whether they have equally contributed to the accident. It is a fact that if the first accident had not been caused by the rider of the two-wheeler, the second accident could not have taken place. By virtue of the first accident, the deceased suffered injury to his leg, by which he lost his balance and fell down on the main road. It is the second accident caused by the tipper lorry, which resulted in the death of the deceased. In the facts and circumstances, this Court is of the view that the death of the deceased was predominantly due to the rash and negligent driving of the driver of the tipper lorry insured with the eighth respondent. Therefore, while apportioning the contributory negligence, this Court is of the view that the negligence on the driver of the tipper lorry can be fixed at 60% and on the rider of the two-wheeler at 40%. Point No.1 is answered accordingly.



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14. As regards the quantum of compensation, this Court is of the view that the notional income fixed by the Tribunal at Rs.20,000/- per month, in the absence of any evidence to prove the income, is on the higher side. Though the claimants had marked Ex.P7 to P10, the Cash Receipts and the Bills, to show the sales made by the deceased in his Broiler Chicken Shop, those bills alone cannot be taken for ascertaining the income of the deceased in the absence of any other evidence. However, taking into consideration the year of the accident and the fact that the avocation of the deceased has been established, this Court is of the view that the notional income of the deceased can be fixed at Rs.15,000/- per month.

15. The deceased was 45 years old at the time of the accident. Thus, 25% of the income has to be added towards future prospects. The multiplier applicable is 14. Since there are 5 dependents, $\frac{1}{4}$ of the income has to be deducted towards personal expenses. Thus, the compensation under the head 'loss of dependency' would be **Rs.23,62,500/-** [Rs.15,000/- + 25% x 12 x 14 x $\frac{3}{4}$].



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WEB COPY 16. The compensation under the other heads is just and reasonable and is therefore confirmed. Thus, the total compensation is modified as follows:

<i>Sl. No</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or reduced</i>
1	Loss of Dependency	Rs.26,88,000/-	Rs.23,62,500/-	Reduced
2	Loss of Consortium (Rs.44,000/- x 5)	Rs. 2,20,000/-	Rs. 2,20,000/-	Confirmed
3	Loss of Estate	Rs. 16,500/-	Rs. 16,500/-	Confirmed
4	Funeral Expenses	Rs. 16,500/-	Rs. 16,500/-	Confirmed
5	Transport Charges	Rs. 1,500/-	Rs. 1,500/-	Confirmed
Total		Rs.29,42,500/-	Rs.26,17,000/-	Reduced by Rs.3,25,500/-

17. Thus, the total compensation payable by the appellant and the eighth respondent is Rs.26,17,000/-. The appellant, the insurer of the two-wheeler, is liable to pay a compensation of Rs.10,46,800/- [Rs.26,17,000/- x 40/100]. The eighth respondent, the insurer of the tipper lorry, is liable to pay a compensation of Rs.15,70,200/- [Rs.26,17,000/- x 60/100].



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18. The appellant is directed to deposit the aforesaid compensation of Rs.10,46,800/- together with interest at 7.5% per annum from the date of the claim petition till the date of realization, excluding the period of dismissal for default and costs, after deducting the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this Judgment.

19. The eighth respondent is directed to deposit the aforesaid compensation of Rs.15,70,200/- together with interest at 7.5% per annum from the date of the claim petition till the date of realization, excluding the period of dismissal for default and costs, after deducting the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this Judgment.

20. On such deposit, the first to fifth respondents/claimants are permitted to withdraw the compensation as per apportionment fixed by the Tribunal along with interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.



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21. In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order/Non-Speaking Order

JEN

Copy To:

- 1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Kuzhithurai,
Kanyakumari District.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras high Court,
Madurai.



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SUNDER MOHAN, J.

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