



C.M.A(MD)No.172 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.03.2024

CORAM:

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

C.M.A(MD)No.172 of 2024

and

C.M.P(MD)Nos.2079 of 2024

The Manager,
Reliance General Insurance Company Ltd.,
1st and 2nd Floor, Vishnu Building,
KP Vallon Road, Kadavanthra,
Ernakulam,Kerala.

: Appellant/Respondent No.2

Vs.

1.Santhi
2.Vignesh
3.Karuppanan
4.Rajesh Kanna

:Respondents Nos.1 to 3/
Petitioners
: Respondent No.4/
Respondent No.1

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the order dated 13.03.2023 passed in M.C.O.P.No.44 of 2021 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Karur.



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For Appellant : Mr.V.Sakthivel

For R1 to R3 : Mr.K.Sathish Kumar

JUDGMENT

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

Being aggrieved over the award passed by the Motor Accident Claims Tribunal/Additional District Judge, Karur in M.C.O.P.No.44 of 2021, dated 13.03.2023, the Insurance Company has filed the present appeal.

2.The appellant Insurance Company is the second respondent in M.C.O.P.No.44 of 2021, on the file of the Motor Accident Claims Tribunal/Additional District Judge, Karur. The respondents 1 to 3 are the claimants, the fourth respondent is the driver of the offending vehicle. The respondents 1 to 3 filed the claim petition in M.C.O.P.No.44 of 2021, claiming a sum of Rs.1,00,00,000/-(Rupees One Crore only) as compensation for the death of one Subramanian in the accident that occurred on 20.09.2020. By the order, dated 13.03.2023, the Tribunal



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awarded a sum of Rs.35,37,880/- (Rupees Thirty Five Lakhs Thirty seven Thousand Eight Hundred and Eighty only) as compensation.

3.Facts of the Case:-

According to the respondents 1 to 3, on 20.09.2020 at about 09.30 a.m., the deceased was riding his Yamaha RX 135 Motor Cycle bearing Reg.No.TN-47-D-8898 on the extreme left side of the road, from North to South direction and when he was nearing Nanaparappu Pirivu road, at that time, the first respondent drove the LMC Car bearing Registration No.KA-02-MD-2988 from West to East at NH-44, in a rash and negligent manner, without following basic road rules dashed against the deceased motorcycle. Due to the said accident, the deceased Subramanian was thrown off and he sustained grievous injuries all over the body. He died in the hospital on the same day. The accident happened only due to the rash and negligent driving of the first respondent, in respect of which, a case was been registered against the first respondent in Cr.No.559/2020 under Sections 279, 337 of IPC by Velayuthampalayam Police. The deceased was aged about 54 years at the time of accident and he was working as a Skilled Labourer in TNPL, Pugalur and earning a sum of



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Rs.36,000/- per month. Therefore, the respondents 1 to 3 filed the claim petition, claiming a sum of Rs.1,00,00,000/- (Rupees One Crore only) as compensation.

4. The appellant filed the counter statement and denied all the averments made in the claim petition and contended that the accident did not occur due to the rash and negligent driving of the driver of the car. The deceased drove the motorcycle without possessing the valid driving licence in a rash and negligent manner at high speed and suddenly crossed the road and invited the accident. Hence, the second respondent is not liable to pay any compensation and prayed for dismissal of the claim petition.

5. Before the Tribunal, on the side of the claimants P.Ws.1 to 3 were examined and 16 documents were marked as Ex.P1 to A.16. On the side of the appellant/2nd respondent no witness was examined and no documents were filed.



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6.Finding of the Tribunal:

The Tribunal, considering the pleadings, evidence of P.W.2, Ex.P1-FIR and Ex.P8-Final Report and arguments of the counsel for the appellant and claimants, held that the accident occurred only due to the rash and negligent driving of the first respondent and directed the appellant Insurance Company to pay a sum of Rs.35,37,880/- (Rupees Thirty Five Lakhs Thirty Seven Thousand Eight Hundred and Eighty only) as compensation and the details are as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Loss of future income	33,77,880/-
2	Loss of consortium	1,20,000/-
3	Loss of Estate	15,000/-
4	Funeral expenses	15,000/-
5	Transport expenses	10,000/-
<i>Total</i>		<i>35,37,880/-</i>

Challenging the same, the Insurance Company filed the appeal on the negligence and quantum.



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7.Submission of the learned counsel for the appellant:

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(I) The learned counsel for the appellant/Insurance Company would submit that even though no one was examined on the side of the appellant, records produced by the claimants themselves proved the contributory negligence on the part of the rider of the deceased.

7(i) From the perusal of Ex.P3-Observation Mahazar and Ex.P4 Rough Sketch it shows that the Tribunal erroneously fixed the 100% negligence on the first respondent. When the appellant insured car was coming in the West-East main road, the deceased rode his two wheeler and entered into the said main road in the North-West direction without noticing the said oncoming vehicle. In the said circumstances, the tribunal ought to have fixed the contributory negligence on the deceased, but failed to fix the same. Hence, interference is required.

8.Submission of the learned counsel for the respondent:

The learned counsel for the respondents 1 to 3 / claimants submitted that nobody was examined on the side of the appellants and the same was considered by the Tribunal and the Tribunal correctly fixed the



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negligence on the first respondent. He would further submit that the income of the deceased was properly assessed by the tribunal and the compensation awarded is just and reasonable. The FIR and final report also filed against the first respondent. He has not disputed the above filing of the final report and the involvement of the vehicle in question. Hence, he seeks for confirmation of the finding of the Tribunal on negligence.

(i)The learned counsel further submitted that on the basis of the Wage Slip Ex.P9, the Tribunal has properly calculated the quantum. Further, 10% of future prospect awarded by the Tribunal is correct. The multiplier as 11 adopted by the Tribunal is also correct and hence, no interference is warranted by this Court. Hence, he seeks for confirmation of the finding of the Tribunal on negligence and also seeks for dismissal of this appeal.

9.Aggrieved against the said award, dated 13.03.2023, the appellant-Insurance Company has filed the present appeal.



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10. We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the fourth respondent and also perused all the materials available on record.

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

11.1. Whether the negligence is correctly fixed on the first respondent?

11.2. Whether the compensation granted is in accordance with law?

12. Discussion on the negligence:

It is the case of the claimants that on 20.09.2020 at about 09.30 a.m., while the deceased was riding his Yamaha RX 135 Motor Cycle bearing Reg.No.TN-47-D-8898 on the extreme left side of the road, from North to South direction and when he was nearing Nanaparappu Pirivu road, at that time, the first respondent drove the LMC Car bearing Registration No.KA-02-MD-2988 from West to East at NH-44, in a rash and negligent manner, without following basic road rules dashed against the deceased motorcycle. Due to the said accident, the deceased



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Subramanian was thrown off and he has sustained grievous injuries all over the body. He died in the hospital on the same day. The accident happened only due to the rash and negligent driving of the first respondent, in respect of which, a case has been registered against the first respondent in Cr.No.559/2020 under Sections 279, 337 of IPC by Velayuthampalayam Police.

12.1.From the evidence of P.W.2 and documents collected by the investigating agency, more particularly, Ex.P.5, the accident took place in the national highways NH-44 road on 20.09.2020. On 20.09.2020 at about 09.30a.m., the insured car proceeded in the main road from West-East direction. There was intersection near the Nanaparappu Junction road, in the North-South direction connecting the West-East direction main road. The deceased riding the two-wheeler from north-south without noticing the ongoing appellant insured car in the main road, entered into the said road. It is also the duty of the deceased to “slow, watch and proceed” whenever he enters into the intersection road ie., நில் கவனி செல். But, the deceased failed to follow the said traffic Rules. It is paramount duty of the insured car's driver, whenever proceeding in the main road, to take care and watch any vehicle entering into the main road



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from the intersection road. More responsibility is on the driver of the vehicle proceeding in the main road to drive vehicle with utmost care in the place ahead of the intersection road. Therefore, both of them have their own duties to follow the traffic Rules. Alert mind also requires the above diligence in driving the vehicle from the main road to the intersection road. In the event of the deceased and the driver of the insured car had taken the precautions, the accident would have been averted. Therefore, this Court applied the theory of contributory negligence on the rider of the two wheeler and the driver of the insured car in the ratio of 20:80 respectively. In view of the above discussions, this Court fixes the contributory negligence on the rider of the two wheeler/deceased in the ratio of 20% and the insured car in the ratio of 80%. Therefore, the findings of the Tribunal cannot sustain and the same is liable to be set aside. Accordingly, the negligence is hereby apportioned upon the deceased to the extent of 20% and the driver of the appellant's car to the extent of 80%. As sequel, the insurance company is directed to pay 80% of the compensation as determined as below.



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13.Discussion on quantum

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The learned trial Judge granted compensation of Rs.35,37,880/-

The learned counsel for the appellant submitted that the learned Tribunal, granted extrorbitant amount as compensation. To appreciate the said contention, this Court perused the salary certificate of the deceased and other relevant documents and observes as follows:

13.1. The deceased was working as skilled Labour under a contractor by name Balakrishnan and he is aged about 54 years and wage receipts were marked as Ex.P9 and Ex.P.16. As per Ex.P16 his salary is Rs.34,895/- and no contrary evidence was let in to disbelieve the above monthly income. Therefore, this Court fixes the monthly income of the deceased as Rs.34,895/-. 10% future prospects also is fixed as per the judgment in **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]**. 10% of the future prospects comes around Rs.34,895 X $10/100 = \text{Rs.}3,490/-$. Hence, the total monthly income of the deceased is Rs.34,895/- + Rs.3,490/= Rs.38,385/-.



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13.2. The age of the deceased is 54 years and since there are three dependents, $1/3^{\text{rd}}$ is deducted for personal expenses and applying the multiplier of “11” the amount comes around as follows:

$38,385 \times 12 \times 11 \times 2/3 = \text{Rs.}33,77,880/-$ and also conventional damage is also correctly awarded as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Loss of future income	33,77,880/-
2	Loss of consortium	1,20,000/-
3	Loss of Estate	15,000/-
4	Funeral expenses	15,000/-
5	Transport expenses	10,000/-
	Total	35,37,880/-

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

15. The negligence part is concerned, this Court fixes 20% on the deceased, who was the driver of the two-wheeler and 80% on the driver of the car.

12/15



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16. Accordingly, this Civil Miscellaneous Appeal is partly allowed in the following terms:

(i)the direction of the Tribunal in MC.O.P.No.44 of 2021, on the file of the Motor Accident Claims Tribunal/Additional District Judge, Karur is hereby set aside.

(ii)the insurance company has to bear the liability of 80% of the above total award amount and the same comes around Rs.28,30,304/-.

(iii)the claimants namely the respondent Nos.1 to 3 are entitled to withdraw the same as apportionment hereunder:

<i>Claimant</i>	<i>Amount in (Rs)</i>
Santhi/first claimant/wife of the deceased	16,98,182/-
Vignesh/second claimant/son of the deceased	5,66,061/-
Karuppan/third claimant/father of the deceased	5,66,061/-

(iv)The appellant Insurance Company is directed to deposit the award amount with proportionate accrued interest and costs, and can deduct the amount if already deposited, within a period of four weeks from the date of receipt of a copy of this order.

(v)on such deposit, the claimants are hereby permitted to withdraw the same.



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There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

**(V.B.S.J.,) (K.K.R.K.J.,)
06.03.2024**

Index :Yes/No
Internet :Yes/No
am.

To

- 1.The Motor Accident Claims Tribunal/
Additional District Judge, Karur.
- 2.V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN.J.,

and

K.K. RAMAKRISHNAN.J.,

am

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