



C.M.A(MD)No.81 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : 28.10.2024

CORAM:

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

C.M.A(MD)No.81 of 2024

The Branch Manager
Reliance General Insurance Company Ltd.,
141/3, 1st Floor, New Bye Pass Road,
M.P Sarathi Nagar, Chennai,
Branch Office,
No.178, 2nd Floor, 10th Cross,
Thillainagar East, Trichy 6200 18.

... Appellant

Vs.

1.R.Raja

2.R.Sureshiya

3.R.Abishekraj

4.Minor.Rajashree

(4th minor respondent represented through her father /guardian 1st respondent Raja)

5.M.Jeyakumar

... Respondents



C.M.A(MD)No.81 of 2024

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 09.10.2023 passed in M.C.O.P.No.327 of 2021, on the file of the Motor Accident Claims Tribunal/Principal District Judge, Pudukottai.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.R.Karthika

JUDGMENT

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

The Insurance company filed this appeal challenging the quantum of the award passed in M.C.O.P.No.327 of 2021, dated 09.10.2023, by the Motor Accident Claims Tribunal Judge/ Principal District Court, Pudukottai.

2.Facts of the case:

The deceased Rajaman was the son of the first and the second respondents in the above C.M.A., and the third and the fourth respondents are his brother and sister. On 09.09.2020, at 11.30 a.m, he was returning to his home in the two wheeler bearing registration No.TN 48 Z 8122 from west to East direction and turned towards the south direction in



C.M.A(MD)No.81 of 2024

Pattukottai Aranthangi road on the left side and at that time, the appellant insured “*Goods carrier Ashok Leyland Dost*” bearing registration No.TN 49 CJ 2629 was driven by its driver, namely, the first respondent in a rash and negligent manner and dashed against the two wheeler and hence, he was thrown off and fell down and sustained grievous injuries on his head and he was admitted in the Keeramangalam Government Hospital and then referred to Aranthangi Government Hospital and he died at 12.00 noon. Therefore, a Criminal Case was registered against the driver of the said goods carrier. The respondent Nos.1 to 4 in the above C.M.A., have filed the claim petition in M.C.O.P.No.327 of 2021, on the file of the Motor Vehicle Accident Claims Tribunal/Principal District Court, Pudukkottai and claimed compensation of Rs.50,00,000/-. In the claim petition, it is stated that the deceased was aged about 18 years and he had applied for B.E., Civil Engineering Course after completion of his 12th standard examination.

2.1.The appellant insurance company filed a counter denying the manner of the accident stated in the claim petition and they specifically denied the liability and they also raised the ground non-joinder of



C.M.A(MD)No.81 of 2024

necessary party, namely, the insurer of the two wheeler and they also raised the plea that the rider of the two wheeler, namely the deceased rode the two wheeler without license and without wearing helmet and he solely is responsible for the accident.

2.2.The first respondent owner of the lorry filed the counter denying the manner of the accident and also pleaded the same ground of non-joinder of the party and claimed that the claim of the compensation is very high and he is not responsible to pay compensation.

2.3.The claimants to prove their claim examined P.W.1 to P.W.3 and marked Ex.P1 to Ex.P11. On the side of the respondent, R.W.1 officer attached with the appellant insurance company was examined and marked Ex.R1 to Ex.R7. Ex.C1 was marked as Court document.

3.Finding of the Tribunal

The learned Tribunal Judge after considering the entire evidence on record, fixed the negligence on the driver of the “*Goods carrier Ashok Leyland Dost*” and fixed the monthly income of the deceased as Rs.



C.M.A(MD)No.81 of 2024

14,562/-, on the basis of the judgment of the Division Bench of this Court reported in **2019 (1) TNMAC 54** and also fixed the age of the deceased on the basis of the post mortem report. Since he had applied for the course of B.E.Civil Engineering, he applied the future prospect as per the ***Pranay Sethi Case***, and calculated the compensation as follows by passing the impugned order:

<i>Sl.No</i>	<i>Under the Head</i>	<i>Calculation</i>	<i>Amount</i>
1	Monthly Income	Rs.14,562/-	Rs.14,562/-
2	Add to Future Prospects 40%	Rs.14,562/- (+) 5,825/-	Rs.20,387/-
3	Deduction of 1/3 for his personal expenses	Rs.20,387/- (-) 6,796/-	Rs.13,591/-
4	Annual Income	Rs.13,591/- X 12	Rs.1,63,092/-
5	Loss of Income after applying multiplier 18	Rs.1,63,092/- X 18	Rs.29,35,656/-
6	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
7	For Loss of Estate	Rs.15,000/-	Rs.15,000/-
8	Loss of Consortium	Rs.40,000/-	Rs.40,000/-
9	Amount Entitled to the petitioners after deducting 20% fir the negligence of the deceased	Rs.29,35,656/- (+) 15,000/- (+) 15,000/- (+) 40,000/-	Rs.30,05,656/- (-) Rs.6,01,131/- (=) Rs.24,04,525/-

Aggrieved over the same, the appellant insurance company filed this appeal, challenging the quantum and negligence.



C.M.A(MD)No.81 of 2024

4. The learned counsel for the appellant insurance company submitted that the claimant's document itself proved that the accident happened due to the negligence of the deceased and hence, the learned Tribunal Judge committed error in fixing the negligence on the part of the driver of the insured goods vehicle. The learned counsel further submitted that the learned Tribunal Judge without any evidence fixed the notional monthly income of the deceased as Rs.14,562/- and instead of deducting $\frac{1}{2}$ for his personal expenses, deducted $\frac{1}{3}$ by treating all the claimants as the dependants of the deceased. Therefore, he seeks to set aside the award passed by the learned Tribunal Judge.

5. The learned counsel appearing for the claimants submitted that to prove the negligence, P.W.2 independent witness has been examined and no contra evidence was adduced on the side of the appellant insurance company and the policy was in force and therefore, the appellant insurance company is liable to pay compensation for the accident caused by the first respondent insured vehicle bearing registration No.TN 49 CY 2629. The learned Tribunal Judge considering his completion of 12th standard and his application made for B.E.Civil Engineering Course and



C.M.A(MD)No.81 of 2024

on the basis of the judgment of this Court reported in **2019 1 TNMAC 54 (DB)**, correctly took the monthly income of the deceased as Rs.14,562/- and considering the number of the claimants, even though the deceased was bachelor, he applied 1/3 deduction and applied the multiplier of 18 and arrived the loss of income of Rs.29,35,656/-. Hence, he seeks for dismissal of this appeal.

6.This Court considered the rival submissions made by the learend counsel appearing on either side and perused the materials available on record and the impugned award.

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

7.1.Whether the negligence is correctly fixed on the driver of the vehicle insured with the appellant and the deceased?

7.2.Whether the learned Tribunal Judge correctly fixed the liability upon the insurance company?

8.Discussion on negligence:

P.W.1, deposed that the accident happened only due to the rash and



C.M.A(MD)No.81 of 2024

negligent driving of the “*Goods carrier Ashok Leyland Dost*”. He also reaffirmed the same in the course of cross examination. There was no contra evidence adduced on the side of the insurance company. Though R.W.1 manager of the company was examined and he was not the eyewitness to the occurrence and he deposed that due to the negligent driving of the deceased the accident happened and the deceased drove his vehicle without license and without wearing helmet. But he admitted that they insured the vehicle and the policy was in force and also admitted that FIR was registered against the appellant insured lorry driver and final report also filed against him. Therefore, without any contra evidence, considering that the evidence of P.W.1 to P.W.3 are cogent and trustworthy and filing of the final report against the driver of the lorry, this Court is not inclined to accept the argument of the learned counsel for the appellant Insurance Company that the accident happened due to the negligence of the deceased. Hence, this Court concurs with the finding of the learned Tribunal Judge that the accident happened only due to the driver of the negligence of the “*Goods carrier Ashok Leyland Dost*” insured with the appellant.



9. Discussion on quantum:

WEB COPY

The deceased had completed his 12th standard and applied for the course of B.E.Civil Engineering. Therefore, the tribunal fixed the monthly income of the deceased upon consideration of the cost of inflation index and followed the fixation of the monthly income in the Division Bench of this Court in the case of *Andal Vs. Avinav Kannan* reported in **2019 (1) TNMAC 54 (DB)**, fixed the notional income of Rs. 14,562/-. The Tribunal also applied 40% of future prospects considering the evidence that he had applied for B.E.Civil Engineering course.

10. In this case, deceased was a student and hence, the learned Tribunal Judge ought to have deducted $\frac{1}{2}$ for his personal expenditure. But the learned Tribunal Judge erroneously deducted the personal expenditure as $\frac{1}{3}$. Therefore, this Court decides to deduct $\frac{1}{2}$ for his personal expenditure and calculates the loss of income as Rs.22,01,796/-

11. The learned Tribunal has not awarded any compensation under the head of Love and Affection to the claimants. The deceased was son of the first and second respondent and the third respondent is his brother and



C.M.A(MD)No.81 of 2024

fourth respondent is his sister. He died at the age of 18 years and hence, all are deprived of his love and affection. Therefore, each of them is entitled to Rs.40,000/-.

12. In view of the above, the amount awarded by the Tribunal is reduced as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Re-quantified Amount by this Court</i>	<i>Status</i>
Monthly Income	14,562/-	14,562/-	Confirmed
Add to Future Prospects (40%)	20,387/-	20,387/-	Confirmed
Deduction for his personal expenses	6,796/-	10,193.5/- (Deduction of ½ for his personal expenses)	enhanced
Annual Income	1,63,092/-	1,22,322/-	Reduced
Loss of income after applying multiplier 18	29,35,656/-	22,01,796/-	Reduced
Funeral Expenses	15,000/-	15,000/-	Confirmed
For Loss of Estate	15,000/-	15,000/-	Confirmed
Loss of Consortium	40,000/-	1,60,000/- (40,000 X 4)	Enhanced
Amount entitled to the petitioners after deducting 20% for the negligence of the deceased	24,04,525/-	23,91,796/-	Reduced
<i>Total</i>	<i>24,04,525/-</i>	<i>23,91,796/-</i>	<i>Reduced</i>



C.M.A(MD)No.81 of 2024

13. In fine, the Civil Miscellaneous Appeal is allowed in part, reducing the award of the Tribunal from Rs.24,04,525/- to a sum of Rs.23,91,796/- along with 7.5% interest from the date of petition till the date of realization. The appellant is directed to deposit the award amount, less any amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order.

14.The learned Tribunal Judge's finding relating to the fixing 20% of contributory negligence on the part of the deceased and the pay and recovery is hereby confirmed for the reason that there was no cross appeal. The claimants are entitled to withdraw the following apportionment:

<i>Claimants</i>	<i>Amount in Rs.</i>
Father of the deceased	9,56,718/-
Mother of the deceased	9,56,718/-
Brother of the deceased	1,19,590/-
Sister of the deceased	3,58,770/-

The insurance company is permitted to withdraw the remaining amount if it had deposited the entire amount. The appellant/Insurance Company is directed to deposit the entire award amount with accrued



C.M.A(MD)No.81 of 2024

interests and costs within a period of eight weeks from the date of receipt
of a copy of this order, if not already deposited.

**(V.B.S.J.,) (K.K.R.K.J.,)
28.10.2024**

Index :Yes/No

Internet :Yes/No

sbn

To

- 1.The Special Sub Court,
Motor Accidents Claims Tribunal,
Pudukottai.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.81 of 2024

V.BHAVANI SUBBAROYAN.J.,

and

K.K. RAMAKRISHNAN.J.,

sbn

C.M.A(MD)No.81 of 2024

28.10.2024