IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1967 of 2021
and C.M.P.Nos.10632 of 2021 and 1160 of 2023

The Manager,
M/s.IFFCO-TOKIO General
Insurance Company Limited,
Opposite to Hasan Honda,
100 feet road,
Olandaikeerapalayam,
Puducheri. ... Appellant

Vs.

1.Vedavalli

2.Sounder Rajan

3.Maithily

4.Bhuvaneshwari

5.Ananthram (Minor)

6.K.Senthil Akash ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 03.11.2020 passed in M.C.O.P.No.563 of 2019 by the Motor Accident Claims Tribunal (In the Court of II Additional District Judge), Puducherry.

For Appellant	:	Mr.J.Michael Visuvasam
For Respondents	:	Mr.R.Sivakumar for R1 to R5 No appearance for R6

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the negligence fixed on the appellant and the quantum of compensation fixed by the Tribunal vide award dated 03.11.2020 made in M.A.C.T.O.P.No.563 of 2019 by the Motor Accident Claims Tribunal, II Additional District Court, Puducherry.

2. The facts of the case which required for disposal of the appeal are that on 02.11.2018 at about 13.30 hours, when the deceased, namely, Ramachandran, was proceeding in his motor cycle near Vivek's show room,

Reddiarpalayam, from north to south direction along Pondicherry to Villupuram Road, Pondicherry, the driver of the sixth respondent opened the front right side of the car door without seeing the deceased vehicle which was coming and the door dashed against the vehicle driven by the deceased, due to which, he fell down and sustained severe injuries over his head. Immediately, he was taken to JIPMER Hospital, Puducherry where he was given first aid and as per the doctor advice, the deceased was taken to SIMS Hospital, Chennai, however, he got Traumatic Pre Hospital cardiac arrest on 02.11.2018 at 10.45 p.m., and he succumbed to injuries and died on 02.11.2018. Thereafter, the claimants, who are the wife, children, daughter-in-law and grandson of the deceased, have filed claim petition before the Tribunal claiming compensation of Rs.40,00,000/- against the respondents, who are the owner and the insurer of the car. The Tribunal, considering the evidence placed before it and submissions made by both sides, has fixed 90% liability on the driver of the offending vehicle and fixed 10% liability on the deceased on the ground that the deceased has not worn the helmet at the time of accident, which was found from the nature of injuries sustained. Having fixed 10% liability on the deceased, the Tribunal proceeded to fix the compensation of

Rs.15,32,250/-. Aggrieved over the negligence and the quantum of compensation fixed by the Tribunal, the appellant/Insurance Company has filed this Civil Miscellaneous Appeal.

3. The learned counsel appearing for the appellant submits that P.W.1, who is the wife of the deceased, is not an eye-witness and she was not available in the scene of occurrence and P.W.2 was examined, who was alleged to be in the scene of occurrence. Relying on the evidence of P.W.2, the Tribunal has fixed 90% liability on the appellant/Insurance Company. However, P.W.2 made a written complaint to the Police stating that he came to know about the accident and the injuries sustained by the deceased, through his relative one Lakshminarayanan, based on which, a case in Crime No.286 of 2018 was registered for the offence punishable under Sections 279 and 337 IPC, and P.W.2 himself had stated in Ex.P1/FIR that he was the relative of the deceased. However, believing the words of P.W.2, the Tribunal held that P.W.2 is not the relative of the deceased and is not an interested witness, and fastened the liability on the Insurance Company relying on the evidence of P.W.2. Apart from that, the deceased was a retired military officer and had

been receiving the pension of Rs.34,367/-. P.W.1, wife of the deceased in her cross-examination deposed that she receives the family pension of Rs.20,000/- and the deceased was not employed anywhere at the time of the accident. Therefore, the dependents of the deceased are entitled to only Rs.14,500/- as pecuniary loss of income, however, the Tribunal has taken the monthly income of the deceased as Rs.34,500/- which is not sustainable one and the other heads awarded by the Tribunal are also on the higher side. Further, the respondent Nos.2 to 5 are the major persons and they are not dependents of the deceased, hence, the Tribunal ought to have deducted 50% towards personal expenses, instead of $\frac{1}{4}^{th}$ towards personal expenses.

4. Per contra, the learned counsel appearing for the respondent Nos.1 to 5 submits that admittedly, the Police have registered a case against the driver of the appellant/Insurance Company's vehicle. In order to prove the negligence against the deceased, the appellant/Insurance Company did not examine any independent witness. The accident was happened due to sudden opening of the front door by the driver of the sixth respondent, due to which, the deceased fell down from the vehicle and sustained grievous injuries

and died in the hospital. It is the duty cast on the appellant/Insurance Company to examine any independent witness to prove the manner in which the accident happened and to disprove the case of the claimants. In the absence of the same, the Tribunal has accepted the evidence of P.W.2 and fastened the liability against the Insurance Company. Further, merely on the basis of nature of injuries sustained by the deceased, the Tribunal has inferred that if really the deceased was wearing helmet at the time of accident, definitely he would avoid his death, and decided that the deceased had contributed his part of negligence to his death by non-wearing the helmet and fixed 10% liability on the deceased, without any evidence. In respect of quantum of compensation, at the time of the accident, the deceased was receiving the monthly pension of Rs.34,367/- and though P.W.1/wife of the deceased admitted that she is receiving a sum of Rs.20,000/- as monthly pension after the death of the deceased, if the deceased was alive, he may work as security in a private concern and therefore, considering all those aspects, the Tribunal has taken the income of the deceased as Rs.34,500/-.

5. This Court carefully considered the submissions made on both sides and perused the materials available on record.

6. Admittedly, the Law Enforcing Agency registered a case against the driver of the 6th respondent's car in Crime No.286 of 2018. On perusal of the records, it reveals that when the deceased was proceeding in a motorcycle near Vivek's show room, Reddiarpalayam, from north to south direction along Pondicherry to Villupuram Road, Pondicherry, the driver of the sixth respondent opened the front right side of the car door without seeing the deceased vehicle which was coming and the door dashed against the vehicle driven by the deceased, due to which, he fell down and sustained severe injuries over his head and died in the hospital. Hence, this Court, even in the absence of P.W.2 evidence, can draw a presumption that the accident was happened due to rash and negligent act of the sixth respondent's driver. Further, the appellant/Insurance Company has not adduced any evidence to disprove the manner in which the accident was happened as claimed by the claimants. Though there is no proof to show that the deceased has not worn helmet at the time of accident, merely on the injuries sustained by the deceased,

the Tribunal has drawn an inference that if really the deceased was wearing the helmet at the time of accident, definitely he would avoid his death, and fixed 10% contributory negligence on the deceased which is unjustifiable one. Hence, this Court is inclined to fix the entire negligence against the appellant/Insurance Company by setting aside the contributory negligence of 10% fixed on the deceased and accordingly, the contributory negligence of 10% fixed on the deceased is set aside and the entire negligence is fixed against the appellant/Insurance Company.

7. In respect of quantum of compensation, the deceased was aged about 79 years at the time of accident and was alleged to have been received the monthly pension of Rs.34,500/- at the time of accident. From the evidence of P.W.1, it reveals that the first respondent/first claimant is receiving a sum of Rs.20,000/- as monthly pension after the death of the deceased. Hence, the dependents of the deceased are undoubtedly entitled to Rs.14,500/- as monthly income of the deceased. Apart from that, if the deceased was alive, he may work as security personnel in a private concern, since he was a retired military officer and may earn more than Rs.15,000/- per month. Hence, considering all

those aspects, this Court deems it appropriate to fix the monthly income of the deceased as Rs.30,000/- and the respondents 1 to 3/claimants 1 to 3 are the wife and the children of the deceased and the respondents 4 and 5/claimants 4 and 5 are the daughter-in-law and grandson of the deceased. Therefore, deduction of 1/3 towards personal expenses would be appropriate. After deducting 1/3rd towards personal expenses, the notional income could be safely fixed at Rs.20,000/- [30,000-10,000] and since the deceased was 79 years old at the time of accident, no future prospects can be added and hence, applying the multiplier of "5", the loss of dependency is arrived at Rs.12,00,000/- (Rs.20,000/- * 12 * 5). The amount awarded under the other heads is just and reasonable.

8. In the light of the above discussion, the compensation awarded by the tribunal is modified as follows:

Sl. No.	**Compensation awarded under the head**	**Amount (in Rs.)**
1.	Loss of Dependency	12,00,000/-
2.	Loss of Estate	15,000/-
3.	Funeral expenses	15,000/-

4.	Loss of consortium to the first claimant	40,000/-
5.	Loss of consortium to the second and third claimants	80,000/-
	Total	**13,50,000/-**

9. The compensation awarded by the tribunal at Rs.17,02,500/- is hereby reduced to Rs.13,50,000/**-.** The above compensation shall be paid together with interest at 7.5% p.a. The appellant/Insurance Company is directed to deposit the reduced compensation of Rs.13,50,000/-, less the amount if any already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. On such deposit, the respondent Nos.1 to 5/claimants are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal by making proper application before the Tribunal. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

10. In the result, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs. Connected miscellaneous petitions are closed.

09.01.2025

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
ssb

To

1. The Motor Accident Claims Tribunal,
   II Additional District Court, Puducherry.

2. The Section Officer,
   V.R. Section,
   High Court, Chennai.

M.DHANDAPANI, J.

ssb

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The matter is listed today under the caption "for being mentioned" at the instance of the Registry.

2. It is brought to the notice of this Court that in paragraph No.9 of the judgment dated 09.01.2025, the Tribunal though fixed the compensation fixed at Rs.17,02,500/-, however, after deducting amount towards contributory negligence, which has been fastened on the deceased, the amount payable is only Rs.15,32,250/-. However, it has been wrongly mentioned as Rs.17,02,500/-. Therefore, Registry prays this Court to clarify the said portion of the order.

3. This Court perused paragraph No.9 of the order dated 9.1.2025 and finds that the amount with regard to contributory negligence has not been deducted while fixing the compensation. Accordingly, para-9 of the order dated 9.1.2025 shall stand replaced as under :-

"9. The compensation awarded by the tribunal at Rs.15,32,250/- is hereby reduced to Rs.13,50,000/-. The above compensation shall be paid together with interest at 7.5% p.a. The appellant/Insurance Company is directed to deposit the reduced compensation of Rs.13,50,000/-, less the amount if any already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. On such deposit, the respondent Nos.1 to 5/claimants are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal by making proper application before the Tribunal. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered."

4. The Registry is directed to carry out necessary correction in the judgment dated 09.01.2025 and issue fresh copy of the order to the parties.

10.07.2025

ssb

M.DHANDAPANI, J.

ssb

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