



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :22.10.2025

Pronounced on :07.11.2025

CORAM

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.M.A.No.163 of 2022

and

C.M.P.No.1219 of 2022

The Manager,
M/s IFFCO TOKIO General Insurance Company Limited,
IFFCO Bhavan, 5th Floor,
No.181, Waterfield Road,
Near National College, Bandra,
Mumbai 400 050, Maharastra State. ...Appellant/Respondent

/versus/

1.Mrs.Jyothi, W/o Late Kesavamurthy,
2.Dhayaswaroop (Minor), S/o Late Kesavamurthy,
3.Karthkeya (Minor), S/o Late Kesavamurthy,
4.Mrs.Girija, W/o Venkatasamy,
Mr.Venkatasamy(died)
5.Hema Saraswathi, D/o Venkatasamy
(Respondents 2 & 3 Minors Rept.
By mother & NF 1st Respondent)

All are residing at
Door No.21/109, Virupatchi Koil Street,
Kelamangalam Village & Post,
Denkanikottai Taluk,



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Krishnagiri Taluk & District. ..Respondents 1 to 5/Petitioners

6.M/s Sindhu Cargo Services Pvt.Ltd.,
Building No.109, Unit No.3,
Logistic Park, Indian Corporation,
Dapode Village,Bhiwandi,
Maharashtra 421 302.

..6th Respondent/1st Respondent

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.327 of 2017, dated 19.03.2020 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur.

For Appellant :Mr. M.B.Raghavan

For Respondents :Mr.S.P.Yuvaraj for R1 to R5
R6-exparte

JUDGMENT

DR.G.JAYACHANDRAN,J.

The Appellant herein is the Manager, M/s IFFCO TOKIO General Insurance Company Limited. The Appeal is directed against the award passed by the Motor Accident Claim Tribunal, Additional District Court, Hosur in M.C.O.P.No.327 of 2017 dated 19.03.2020.



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2.The Respondents 1 to 5 are the dependants/claimants of the accident victim Kesavamurthy. The sixth respondent is the owner of the offending vehicle bearing Registration No:MH 04/GR 4742. (Canter Lorry).

3.The case of the claimants before the Tribunal:

On 30.09.2015 at about 11.30 hours, Kesavamurthy, aged about 30 years, while riding the two wheeler Hero Honda Splendor bearing Registration No:TN 70-L 8752 sustained fatal injuries on his head and vital organ when the lorry bearing Registration No:MH 04/GR 4742 hit his two wheeler on the rear and dashed him down.

4. On the date of the accident, the victim was working as Accountant in a Private Firm, by name, M/s Millennium Cargo Carriers, Hosur, for a salary of Rs.25,000/- p.m. His wife, two minor children, father, mother and unmarried sister were depending on his income. The loss and expenses estimated as Rs.97,05,200/-. However, claim petition filed restricting the claim to Rs.50,00,000/- (Rupees Fifty Lakhs Only) against the owner of the vehicle and the insurer.



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5. The owner of the vehicle remained absent. The Insurance Company which has indemnified the lorry owner, contested the claim petition on the ground that

(a) The victim failed to follow the Road Rules properly. Instead of using the service road for riding two wheeler, he was riding his vehicle on the Highways meant for heavy vehicles. The negligence of the victim is the cause for the accident.

(b)The victim had no driving license. The two wheeler was not insured.

(c)The alleged employment of the victim and his income claimed by the claimants denied.

(d)The victim had predominantly contributed to the accident.

6. The Tribunal formulated the following points for consideration:-

(1)Whether the accident had happened due to the negligent act of the Canter Lorry bearing Registration No: MH 04 GR 4742 ?

(2)Whether the respondent is liable to pay compensation ? if so, how much compensation, the petitioner is entitled to ?



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7. Pending petition, the father of the victim died and his death was recorded. On behalf of the claimants, the first petitioner, the wife of the victim examined as PW-1. To prove the negligence on the part of the lorry driver, one Mr.Siyam was examined as PW-2. Mr.Anandakumar, a co-worker of the victim examined as PW-3 to prove his income. 19 documents marked as Ex.P-1 to Ex.P-19. On the side of the respondents, the Motor Vehicle Inspector Report in respect of the two wheeler and the lorry marked as Ex.R-1 and Ex.R-2 respectively.

8. The Tribunal on considering the evidence, awarded Rs. 31,59,000/- as compensation with 7.5% interest p.a. It apportioned the compensation among the petitioners as below:-

1st Petitioner (widow)	:- 18,59,000/-
2nd and 3rd Petitioners: (minor children)	:-4,00,000 /- each.
4th petitioner (mother)	:-3,00,000/-
6th petitioner (sister)	:-2,00,000/-



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9. The Tribunal on considering Ex.P-8, the salary certificate signed and given by the Proprietor of M/s Millennium Cargo Carrier and Ex.P-19 authorisation letter given in writing by its Proprietor, found discrepancies and the evidence of PW-3, held unreliable. In the absence of other documents, like, income tax returns, pay particulars furnished to the relevant Government Authorities, notionally fixed the monthly income of the deceased Kesavamurthy at Rs.15,000/- p.m. By applying multiplier '16', the Tribunal fixed the loss of income at Rs.21,60,000/- and added 40% (Rs.8,64,000) towards future prospect. It then, deducted 1/3rd towards personal expenditure.

10. The compensation awarded by the Tribunal under various heads is as below:-

1	Loss of dependency	Rs.21,60,000/-
2.	Loss of love and affection	Rs.50,000/-
3.	Transportation	Rs.10,000/-
4.	Funeral expenses	Rs.15,000/-
5.	Loss of Estate	Rs.20,000/-
6.	Future Prospects	Rs.8,64,000/-
7.	Loss of consortium	Rs.40,000/-
	Total	Rs.31,59,000/-

11. The appeal by the Insurance Company is on the following grounds:-

a) The Tribunal erred in fixing negligence on the lorry driver based



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on the evidence of PW-2, who claims that he was riding his two wheeler behind the victim and say, the lorry was rashly and negligently hitting the two wheeler of the victim. PW-2 presence at the scene of accident is highly doubtful since, he had not mentioned about the details of the two wheeler in which he claims to have been riding. He admits that he does not possess a driving license. He is not conversant with Tamil language in which he has sworn affidavit in lieu of his chief examination.

12. Further, the FIR Ex.P-1, which is relied by the Tribunal to fix the negligence on the lorry driver is given by one Balamurugan, the brother of the victim Kesavamurthy. The defacto complainant is neither an eye witness nor a witness in the claim petition. Therefore, the Tribunal ought not to have relied on Ex.P-1 for the purpose of fixing the negligence on the lorry driver. The Learned Counsel for the appellant further submitted that, the Tribunal ought to have considered the contribution by the victim, who had driven the un-insured two wheeler, without a valid driving license and without wearing helmet. The head injuries he sustained had caused the death. Therefore, the Insurance Company cannot be forced to pay the compensation without any deduction towards the contributory negligence which could be



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apparently seen. The notional income of Rs.15,000/- fixed by the Tribunal without any evidence regarding the qualification of the victim or his earning capacity. The compensation under other heads is also in contrary to the principle laid down in *Pranay Sethi's case*.

13. Per contra, the Learned Counsel for the respondents submitted that the Tribunal has rightly fixed the negligence on the lorry driver, in view of the documentary evidence Ex.P-1 FIR and the ocular evidence of PW-2. In the absence of contra evidence, the finding of the Tribunal cannot be found fault.

14. Regarding the quantum, the Learned Counsel submitted that, the victim aged about 32 years died due to the injuries he sustained in the road accident. He was gainfully employed for a monthly salary of Rs.25,000/- in a private firm and the same is proved through Ex.P-8 and through the testimony of PW-3. The Trial Court however fixed the salary notionally at Rs.15,000/- with 40% addition towards future prospects, since the claimants were not able to file any other proof for the income. The compensation under the other head also not in excessive or contrary to the dictum laid in *Pranay*



Sethi's case.

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15. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

16. The road accident is not disputed. The negligent and rash driving is attributed to the lorry driver against whom the First Information Report registered under Crime No:319 of 2015 under Sections 279 and 304(A) IPC. That apart, one of the witnesses for the claimant namely Siyam had spoken about the accident. His evidence is not impeached in the cross examination. No contra evidence available to doubt about the negligence of the lorry driver or any element of contribution by the victim. Failure to produce the driving licence of the victim to the MV Inspector, who had given the report Ex.R-1, is not a conclusive proof that the victim had no driving license. Driving on the Highway instead of service road is not violation of road rules unless there is specific prohibition. In this case, the Insurance Company had not produced any evidence to show that two wheelers are prohibited to use the Highways in Hosur- Bangalore NH 44 Road, near Dharga Bus Stop.



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17. In respect of quantum, we find that the Tribunal has not relied on Ex.P-8 or the evidence of PW-3. It has taken into consideration the age and earning capacity of the victim based on his qualification and had fixed Rs.15,000/- as income p.m. There is no excess either in fixing the notional income nor in awarding compensation on the other heads, in view of the number of dependants and their age. We find no serious deviation or violation of the dictum laid in *Pranay Sethi's case*.

18. Therefore, we dismiss the Civil Miscellaneous Appeal and confirm the award passed by the Tribunal in M.C.O.P.No. 327 of 2017 dated 19.03.2020. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

(Dr.G.J.J.) & (M.S.K.J.)

07.11.2025

Index:yes/no

Internet:yes

10/12



Speaking order/non speaking order
Neutral citation:yes/no
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To

The Motor Accidents Claims Tribunal,
Additional District Court, Hosur.

Dr.G.JAYACHANDRAN, J.
and
MUMMINENI SUDHEER KUMAR, J.



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