



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.119 of 2023

1.Vijaya

2.Yesu

... Appellants

vs.

1.The Proprietor,
Delhi Gujarat Road Carriers,
B/368, Sushant Lok, Phase-I,
Gurgaon, Hariyana – 122 001.

2.The Manager,
The Oriental Insurance Company Ltd.,
Arcot Road,
Vellore.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow the above Civil Miscellaneous Appeal and enhance the award passed in Judgment and Decree dated 26.03.2021 made in M.C.O.P.No.144 of 2018 on the file of the Motor Accident Claims Tribunal, (I Additional District and Sessions Judge) Vellore.

For Appellants : Mr.C.Prabakaran

For R2 : Mr.J.Chandran

For R1 : Left



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J U D G M E N T

WEB COPY Not satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, (I Additional District and Sessions Judge) Vellore in M.C.O.P.No.144 of 2018, dated 26.03.2021, claimants have come by way of this appeal.

2. The claimants are the appellants. It is the case of the claimants that their son namely Nethaji died in a road accident that had occurred on 23.10.2017. It was stated in the claim petition that the deceased was riding two wheeler bearing Registration No.AP 03 BY 7853 in Chittoor - Vellore Road. When he was nearing RMM Food Products, Gangasaagaram, Chittoor, a Container Lorry bearing Registration No.NL 01 AA 7742 belonged to the 1st respondent insured with the 2nd respondent came in a rash and negligent manner and dashed against the two wheeler. As a result of the accident, the deceased sustained severe head injury and died in hospital. Therefore, a claim petition was filed by parents of the deceased seeking compensation of Rs.45,00,000/-.



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3. The 1st respondent-owner of the Container Lorry remained *exparte* before the Tribunal. The claim petition was opposed only by the 2nd respondent-insurer of the offending vehicle. It was the case of the insurer that the 1st respondent paid premium by way of cheque on 06.10.2017 and the policy was issued by the 2nd respondent's Office on the same day. Later, the cheque issued by the 1st respondent/insured was dishonoured and hence, the policy was cancelled. Therefore, it was claimed by the insurer that it was not liable to pay compensation amount on behalf of the insured. It was also stated that accident had occurred only due to the rash and negligent driving of the deceased.

4. Before the Tribunal, the 1st appellant/1st claimant was examined as PW.1 and One R.Ravichandra was examined as PW.2. On behalf of the claimants, 10 documents were marked as Exs.P1 to P10. An Official of the 2nd respondent/Insurance Company was examined as RW.1 and through him, 7 documents were marked as Exs.R1 to R7.

5. The Tribunal based on the evidence available on record, came to the conclusion that accident had occurred only due to the rash and negligent



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driving of the Container Lorry by its driver. The Tribunal also came to the conclusion that the cancellation of the policy and the intimation of the same to the insured, had taken place only subsequent to the date of accident. The Tribunal also held that the cheque issued by the 1st respondent/insured for payment of premium was dishonoured and hence, the Insurance Company was not liable to pay compensation. Since the deceased failed to wear helmet and failed to produce driving licence, the Tribunal fixed 25% negligence on the part of the deceased. Ultimately, the amount payable to the claimants was quantified at Rs.7,81,474/-(rounded to Rs.7,81,500/-). Aggrieved by the same, the claimants have come by way of this appeal.

6. The learned counsel appearing for the appellants would submit that though the cheque issued by the insured was dishonoured and the policy was cancelled subsequent to the accident on 24.10.2017 and the same was intimated to the insured only thereafter. In such circumstances, the Tribunal ought not have exonerated the Insurance Company. The learned counsel further submits that failure to produce driving licence *per se* will not a ground to fix negligence on the part of the deceased and hence, the Tribunal ought not to have fixed 25% contributory negligence on the part of the



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deceased. The learned counsel further submits that the amount of Rs.6,000/- fixed by the Tribunal as notional income for the deceased is very much on lower side.

7. The learned counsel appearing for the 2nd respondent-Insurance Company vehemently contended that the cheque issued by the insured for payment of premium got dishonoured and therefore, the Tribunal was justified in holding the Insurance Company was not liable to pay compensation. The learned counsel further submits that at the time of accident, the deceased did not wear helmet and he also failed to produce proper driving licence and hence, the Tribunal was justified in fixing 25% negligence on the part of the deceased. The learned counsel also submitted that in the absence of any evidence to prove the avocation and income of the deceased, the Tribunal was justified in fixing notional income at Rs.6,000/- per month.

8. It is seen from the records that the accident had taken place on 23.10.2017. It is seen from Ex.R4, the Cheque issued by the insured for payment of premium was dishonoured on 24.10.2017 as per the intimation



from its banker. As per Ex.R4, the policy was cancelled on 24.10.2017.

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Thereafter, the Insurance Company sent a intimation letter marked as Ex.R6 to the insured regarding cancellation of the policy on 27.10.2017. However, no acknowledgement has been produced to prove the intimation letter reached the hands of the insured. In any event, the date of intimation letter itself was 27.10.2017. Hence, we can come to a definite conclusion that cancellation of the policy and intimation of the same was done only subsequent to the date of accident (i.e. 23.10.2017).

9. The Apex Court in ***United India Insurance Company Limited vs. Laxmamma and others*** reported in ***(2012) 5 SCC 234***, while considering liability of insurer in cases where the cheque issued by insured to pay premium amount got dishonoured, observed as follows:-

“26. In our view, the legal position is this: where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of Sections 147(5).



and 149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof. (emphasis supplied)''

10. In view of law settled by Apex Court, I hold that Insurance Company is liable to pay compensation and the finding of Tribunal exonerating insurance company is set aside.

11. It is seen from the averments found in the claim petition, the deceased received severe head injury due to the accident. At the time of accident, the deceased did not wear helmet. Therefore, 15% negligence can be fixed on the part of the deceased. The Tribunal fixed 25% negligence on the part of the deceased based on the fact, he failed to produce the driving



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licence. In this regard it would be appropriate to refer the judgment of the Apex Court in ***Sudhir Kumar Rana vs. Surinder Singh and others*** reported in ***CDJ 2008 SC 862 = 2008 (12) SCC 436***, the relevant portion reads as follows:-

“8. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini-truck which was being driven rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.”

12. The above view was affirmed and followed subsequently by a Three Member Bench of Apex Court in ***Dinesh Kumar vs. National Insurance Company Ltd., and others***. Therefore, finding rendered by Tribunal that the deceased contributed to accident by his mere failure to possess driving licence by placing reliance on ***M.Ramya vs. G.Ekambaram and another*** reported in ***2021 (1) TNMAC 451***, is unsustainable in view of law declared by Apex Court in the above mentioned judgments.



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13. As per the law settled by the Apex Court in the above mentioned case laws, non-production of driving licence *per se* is not a ground to fix negligence on the part of the deceased. Therefore, this Court is inclined to fix only 15% negligence on the part of the deceased for his failure to wear helmet.

14. In the claim petition, it was stated that the deceased was Electrician and running a mobile service centre. The income of the deceased was mentioned as Rs.40,000/- per month in the claim petition. However, the claimants have not produced any documentary evidence to prove the avocation and income of the deceased. Taking into consideration the date of accident and cost of living, this Court is inclined to fix Rs.15,000/- as notional income of the deceased. The age of the deceased was mentioned as 20 years in the Postmortem Certificate marked as Ex.P2. Therefore, the claimants are entitled to 40% enhancement towards future prospects. The applicable multiplier is 18. Since the deceased died as a bachelor, 50% of the amount is deducted towards personal expenses. Therefore, the loss of dependency is fixed at Rs.22,68,000/- (Rs.15,000 x 1.4 x 12 x 18 x 1/2). A sum of Rs.20,000/- awarded under the head love and affection is increased



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to Rs.80,000/- as Parental Consortium. The medical expenses of Rs.59,824/-

awarded by the Tribunal is confirmed. The Funeral Expenses and Loss of Estate awarded by the Tribunal at the rate of Rs.15,000/- each are also confirmed. The Transportation Expenses of Rs.5,000/- fixed by the Tribunal is set aside. Accordingly, the award passed by the Tribunal is modified as follows:-

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court	Remarks
1.	Loss of Income	Rs.9,07,200/-	Rs.22,68,000/-	Enhanced
2.	Love and Affection	Rs.20,000/-	Rs.80,000/-	Enhanced
3.	Medical Expenses	Rs.59,824/-	Rs.59,824/-	Confirmed
4.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	Transport Expenses	Rs.5,000/-	-	Set Aside
6.	Loss of Estates	Rs.15,000/-	Rs.15,000/-	Confirmed
Total		Rs.10,22,024/-	Rs.24,37,824/-	Enhanced
Contributory Negligence		Rs.2,55,506/- (25%)	Rs.3,65,674/- (15%)	Contributory Negligence reduced to 15%
Total compensation after deductions		Rs.7,81,474/- (rounded to Rs.7,81,500/-)	to Rs.20,72,150/-	Enhanced by Rs.12,90,650/-

15. The Tribunal after deducting 25% contributory negligence on the part of the deceased, fixed the award amount at Rs.7,81,474/- (rounded to Rs.7,81,500/-). In view of the discussions made earlier, from the total compensation amount now fixed by this Court, 15% of the amount shall be



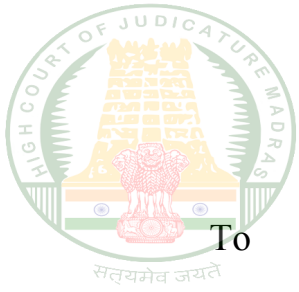
deducted towards contributory negligence. Therefore, the claimants are entitled to Rs.20,72,150/- (Rs.24,37,824 – 15% = Rs.20,72,150).

16. In view of the discussions made earlier, the compensation awarded by the Tribunal is enhanced from Rs.7,81,500/- to Rs.20,72,150/-. The 2nd Respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.20,72,150/- together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation, to the credit of M.C.O.P.No.144 of 2018 on the file of the Motor Accident Claims Tribunal, (I Additional District and Sessions Judge) Vellore, within a period of six weeks from the date of receipt of copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw the award amount by making formal application before the Tribunal.

17. With the above direction, the Civil Miscellaneous Appeal is partly allowed. No costs.

17.03.2025

Index :Yes
Speaking order :Yes
Neutral Citation :Yes
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To

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- 1.The Motor Accident Claims Tribunal,
(I Additional District and Sessions Judge), Vellore.
- 2.The Manager,
The Oriental Insurance Company Ltd.,
Arcot Road,
Vellore.
- 3.The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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