



C.M.A.No.1685 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.1685 of 2021
and C.M.P.No.8939 of 2021

The Divisional Manger
The National Insurance Company Limited
No.12, 1st Floor, J.N.Street
Puducherry.

... Appellant

VS.

1.Anjalatchi

2.Ashashini (Minor)

3.Vignesh (Minor)

4.Pokkalai

5.Jayenthraj

... Respondents

*(Minors 2 and 3 are represented by their next friend the
1st Respondent herein)*

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 11.03.2020 in MCOP No.529 of 2016 on the file of the Motor Accident Claims Tribunal (Presiding Officer) (III Additional District Judge) at Puducherry.



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For Appellant : Mrs.R.Sree Vidhya

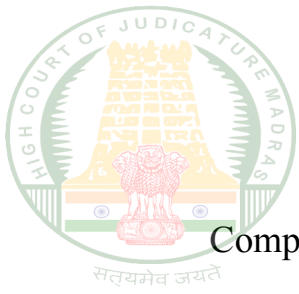
For R1 to R4 : Mr.B.Gopalakrishnan

For R5 : Notice Returned

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the Appellant/Insurance Company challenging the award passed by the Motor Accident Claims Tribunal (Presiding Officer) (III Additional District Judge) at Puducherry in M.C.O.P.No.529 of 2016, dated 11.03.2020.

2. It is not in dispute that the husband of the 1st claimant, father of the claimants 2 and 3 and son of the 4th claimant namely Kanagaraj died in a road accident that had taken place on 03.04.2016. It is the case of the claimant that deceased-Kanagaraj was riding his Motorcycle (TVS Jupiter) bearing Registration No.PY-05-5895 from west to east direction at the time of accident. The Motorcycle bearing Registration No.PY-01-CD-2156 belonging to the 5th respondent herein insured with the Appellant-Insurance



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Company came in the opposite direction in a rash and negligent manner and hit against the Motorcycle of the deceased. As a result of the said accident, the deceased sustained serious injuries and later, the victim died in the hospital on 04.04.2016. It was further stated by the claimants that the deceased was a fisherman and he was earning a sum of Rs.50,000/- per month. Therefore, the claimants filed a claim petition seeking compensation of Rs.1,00,00,000/-.

3. The 5th respondent-owner of the offending vehicle remained *exparte* before the Tribunal. The appellant/2nd respondent therein filed counter disputing the manner of accident as claimed in the claim petition. It was the case of the appellant that the accident had occurred only due to the negligence of the deceased. It was also claimed that the deceased failed to wear the helmet at the relevant point of time and therefore, the contributory negligence should be fastened on the deceased. The appellant also denied the age and income of the deceased.

4. Before the Tribunal, the wife of the deceased/1st claimant was examined as PW.1 and one eyewitness namely Ravindiran was examined as



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PW.2. On behalf of the claimants, 15 documents were marked as Exs.P1 to

P15. On behalf of the appellant-insurance company, no oral and documentary evidences were let in.

5. The Tribunal on appreciation of evidence available on record came to the conclusion that the accident had occurred only due to negligence on the part of the driver of the vehicle belonging to the 5th respondent and hence, the Tribunal held that the respondents therein are liable to pay compensation. The Tribunal also quantified the compensation payable to the claimants at Rs.22,22,000/-. Aggrieved by the same, the Appellant-Insurance Company has come by way of this appeal.

6. The learned counsel appearing for the Appellant/Insurance Company would submit that at the time of accident, the deceased failed to wear helmet and he died due to head injury. Therefore, the Tribunal ought have fixed atleast 50% contributory negligence on the part of the deceased. The learned counsel further submits that the amount of Rs.10,000/- fixed by the Tribunal towards notional income of the deceased is very much on higher side.



7. The learned counsel appearing for the respondents 1 to 4/claimants

would submit that the Tribunal based on the evidence of eyewitness-PW.2, came to the conclusion that at the time of accident, the deceased had worn helmet and hence, the above said finding rendered by the Tribunal need not be disturbed. He further submits that the accident had occurred in the year 2016 and therefore, the notional income of Rs.10,000/- per month fixed by the Tribunal is very much on lower side.

8. In order to prove the manner of accident and negligence on the part of the driver of the vehicle belonging to the 5th respondent, the claimants examined an eyewitness as PW.2. The said witness in his evidence clearly stated that the accident had occurred only due to rash and negligent driving of the driver of the vehicle belongs to the 5th respondent. The eyewitness also clearly asserted that at the time of accident, the deceased was wearing helmet. The evidence of PW.2 was also corroborated by PW.1. On the side of the appellant-insurance company, no witnesses have been examined.

9. In such circumstances, in the absence of any contra evidence, the Tribunal rightly came to the conclusion that the entire negligence was on



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the part of the driver of the 5th respondent's vehicle. Based on the uncontroverted evidence of PW.2, the Tribunal also gave a finding that at the time of accident, the deceased was wearing helmet. The Tribunal came to the conclusion that there was no negligence on the part of the deceased and hence, the said finding need not be disturbed.

10. In the claim petition, it was stated by the claimants that the deceased was a fisherman and he was earning a sum of Rs.50,000/- per month. In order to prove the income of the deceased, no documentary evidence has been produced by the claimants. In the case on hand, accident had occurred in the year 2016, having regard to the date of accident and costs of living, this Court feels that the amount of Rs.10,000/- fixed by the Tribunal is the minimum amount and it cannot be stated excessive. The claimants are satisfied with the quantum of compensation and they have not filed any appeal. In such circumstances, the appellant-insurance company has not made out any case to interfere with the findings of the Tribunal with regard to the quantum of compensation.

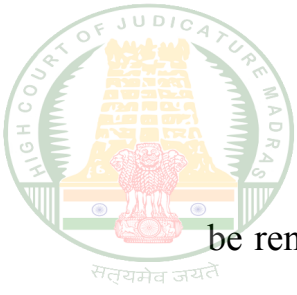


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11. Accordingly, the Civil Miscellaneous Appeal stands dismissed with a direction to the Appellant-Insurance Company to deposit the compensation amount of Rs.22,22,000/- awarded by the Tribunal together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation, after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.529 of 2016 on the file of the Motor Accident Claims Tribunal (Presiding Officer) (III Additional District Judge), Puducherry, within a period of six weeks from the date of receipt of copy of this judgment.

12. The respondents 1 and 4/claimants 1 and 4 namely the wife and mother of the deceased respectively shall be permitted to withdraw their proportionate share from the total compensation amount along with interest and costs, less the amount if any, already withdrawn, by making formal application before the Tribunal.

13. The respondents 2 and 3/claimants 2 and 3 being minors, their respective share is directed to be deposited in anyone of the Nationalized Banks under a Fixed Deposit Scheme for a period of three years which shall



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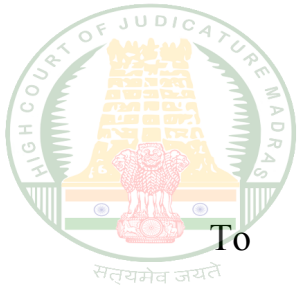
be renewed periodically until they attain majority and the 1st respondent/1st

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claimant, being the Natural Guardian of the minor claimants 2 and 3, is permitted to withdraw the interest accrued thereon once in three months and the same shall be used for the welfare of the minors namely respondents 2 and 3/claimants 2 and 3. No costs. Consequently, the connected civil miscellaneous petition is closed.

28.02.2025

Index :Yes
Speaking order :Yes
Neutral Citation :Yes
dm



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To

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1.The Motor Accident Claims Tribunal (Presiding Officer)
(III Additional District Judge), Puducherry.

2.The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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