



WEB COPY

CMA No. 2231 of 2



DATED: 15-07-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 2231 of 2021

AND

CMP NO. 12318 OF 2021

Bajaj Alliance General Insurance Co.Ltd.,
rep by its Manager,
No. 59th, C- Cross 4th-m-block Rajaji Nagar,
Bangalore 560010,
Karnataka State.

...Appellant(s)

Vs

1. RAJESHWARI
W/o Late Mallikarjuna,

2.Minor.Monisha
S/o Late Mallikarjuna,

3.Minor.Gokul
S/o Late Mallikarjuna,
2 and 3 are minors rep their mother
Rajeshwari,

4.GANGANNA
5.NARASAMMA
6.M.Ravi

...Respondent(s)



Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 05/02/2021 made in MCOP No. 230/2018 on the file of the learned District Judge, Special District Court for Motor Accidents Claims Tribunal, Krishnagiri.

For Appellant(s): Mr.S.Arunkumar

For Respondent(s): Mr.S.Murugan for R1 to R5
R-6 - No Appearance

ORDER

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the Award and Decree dated 05.02.2021 passed in M.C.O.P.No.230 of 2018 on the file of the learned District Judge, Special District Court for Motor Accidents Claims Tribunal, Krishnagiri.

2.The claimants, who are the wife, minor children and parents of the deceased Mallikarjuna, filed the claim petition stating that the deceased was travelling as a pillion rider in a Pulsar motorbike bearing Regn.No.KA-05-JD-5372, which was driven by one Murugan in a rash and negligent manner, and while proceeding on the Vaniyambadi flyover bridge on the Chennai–Bangalore National Highway, the rider lost control and dashed against the parapet wall. Due to the impact, both the rider and the deceased sustained fatal injuries, and



the deceased died despite treatment. At the time of the accident, the deceased was aged about 30 years, and owning three autorickshaws and doing real estate business, earning a sum of Rs.75,000/- per month. The family, consisting of the widow, two minor children and aged parents, depended solely upon his income.

3.The Tribunal, after considering the materials awarded a total compensation of Rs.21,57,800/-, fixing 10% contributory negligence on the deceased and directing the appellant–Insurance Company to pay and recover the amount from the owner of the vehicle.

4.Aggrieved by the said Award, the appellant/Insurance Company contended that the Tribunal erred in assuming territorial jurisdiction without proof and the rider had no valid driving licence and there was wilful breach of policy conditions. The deceased also contributed to the accident by not wearing a helmet and the quantum awarded is excessive.

5.This Court has carefully perused the materials available on record and the findings of the Tribunal. It is admitted that the deceased was a third party. Even if there was a breach of policy condition, the liability of the insurer under



WEB

Section 149(1) of the Motor Vehicles Act is statutory, and the proper course is to direct “pay and recover”, as rightly done by the Tribunal. Regarding the absence of a valid licence, the Tribunal rightly found that the rider possessed only a four-wheeler licence (LMV) and not a two-wheeler licence as contemplated under Section 10(2) of the Motor Vehicles Act. Hence, there was a wilful breach on the part of the owner. In such circumstances, the Tribunal was correct in applying the principle of “pay and recover” and therefore, the direction to the insurer to pay and recover is legally sustainable. On the question of contributory negligence, this Court finds that the deceased had not worn a helmet. However, merely because of non-wearing of helmet, equal apportionment of negligence cannot be made. With respect to territorial jurisdiction, the claim petition was entertained at Krishnagiri since the claimants were residents within the District. As regards the contributory negligence, the Tribunal fixed 10% deduction for non-wearing of helmet by the deceased. Further, the rider of the vehicle has no driving license. The learned counsel also



WEB CMA No. 2231 of 2019

relied Form-10 of the Motor Vehicles Act, which refers to the State Register of Driving Licenses. Hence, the policy was in force at the time of accident. Considering the facts and manner of accident, this Court finds such deduction just and reasonable. Hence, the total compensation of Rs.21,57,800/- awarded by the Tribunal cannot be said to be excessive or arbitrary. In view of the above discussion, this Court finds no merit in the appeal warranting interference with the well-reasoned Award passed by the Tribunal. However, the direction to the appellant/Insurance Company to pay the compensation and recover the same from the owner of the vehicle is confirmed.

Loss of dependency	-Rs. 19,27,800/-
Loss of estate	-Rs. 15,000/-
Funeral expenses	-Rs. 15,000/-
Loss of consortium	-Rs. 2,00,000/-

total	-Rs.21,57,800/-

After deducting 10% of contributor negligence = Rs.19,42,020/-



WEB COPY

6. Accordingly, this Civil Miscellaneous Appeal is disposed of. The appellant Insurance Company is directed to deposit the entire compensation amount of Rs.19,42,020/- with interest @7.5% per annum, less the amount already deposited, with proportionate accrued interest and costs, to the credit of M.C.O.P. No. 230 of 2018 on the file of the learned District Judge, Special District Court for Motor Accidents Claims Tribunal, Krishnagiri, within a period of eight weeks from the date of receipt of a copy of this Judgment, if not deposited earlier and thereafter, recover the said amount from the owner of the vehicle. The claimants are not entitled to get interest for the default period. On such deposit, the claimants/petitioners 1, 4 and 5 are permitted to withdraw the entire award amount with proportionate accrued interest and costs as apportioned by the Tribunal, by making necessary applications.

7. The share of the minors/1 and 2 petitioners shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the



minors/1 and 2 petitioners shall be paid to the mother of the minors, once in three months, till they attain majority.

8.The claimants are directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimants. No costs. Consequently, connected Miscellaneous Petition is closed.

15-07-2025

mps

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

To

1.The District Judge,
Special District Court for Motor Accidents Claims Tribunal,
Krishnagiri.

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



WEB COPY

CMA No. 2231 of 2



T.V.THAMILSELVI J.

mps

CMA No. 2231 of 2021

AND

CMP NO. 12318 OF 2021

15-07-2025