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CMA No. 3567 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 3567 of 2024

1. K. Krishnamoorthy
S/o. Kannan, No.4/20 , Poojaraimettu,
Mariyamankoil Street,
Kondasamuthram T.Kolathur,
Ulundurpettai Tk., Kallakurichi Tk.-
607 209. and another

2. Bhoopathi K
W/o.K.Krishnamoorthy, No.4/20 ,
Poojaraimettu, Mariyamman Koil
Street, Kondasamuthram T.Kolathur,
Ulundurpettai Tk., Kallakurichi Tk.-
607 209.

Appellant(s)

Vs

1. SUSILA
W/o. Jayabalan, 101 Village High
Road, Sholinganallur, Kanchipuram
Dist., Chennai - 600 119.

2.The Manager
Kotak Mahindra General Ins.Co.Ltd.,
2nd Floor, Ceebros Centre, 39 Montieth
Road, Egmore, Chennai - 600 008.



Respondent(s)

PRAYER

To set aside the decree and judgment dated 07.02.2024 made in MCOP NO.296 of 2021 on the file of Motor Accident Claims Tribunal (Special District Judge), Villupuram.

For Appellant(s): Mr. M. Karthik

For Respondent(s): Mr. S. Arunkumar For R2 R1-
No Appearance

JUDGEMENT

This Civil Miscellaneous Appeal has been filed to set aside the decree and judgment dated 07.02.2024 made in MCOP NO.296 of 2021 on the file of Motor Accident Claims Tribunal (Special District Judge), Villupuram(in short "tribunal").

2. Before the tribunal the appellant herein filed the the petition in MCOP NO.296 of 2021, claiming compensation. The appellants herein are the father and mother of the deceased Ravi Kumar. According to the claimants on 11.06.2020 at about 00.30 hours deceased Ravi Kumar was travelling as pillion rider in the Honda Scooty bearing registration No. TN 14 Q 6967 driven by Krishna Kesavan, brother of the first claimant, in rash and negligent manner



dashed against on unknown car, due to which appellants' son Ravikumar ridding as pillion rider sustained grievous injuries and died. At the time of the accident the said Ravikumar, was student aged about 17 years and accident happened due to rash and negligent driving of the rider of the two wheeler, the said vehicle belongs to the first respondent and insured with the second respondent herein. Hence the appellants herein prayed for the compensation of Rs.30 lakhs. The first respondent remains exparte and the second respondent filed objection stating that as per the FIR allegations the father of the deceased gave a complaint that accident was happened due to the unknown car against the two wheeler based on that they raised objections. On hearing both sides, the learned judge concluded that as per the final report of the appellants one car involved in accident, which was not detected. Moreover, at the time of the accident both rider and pillion rider died. There was no evidence that who was driven the two wheeler. Therefore, the tribunal came to the conclusion that accident was not happened due to unknown hit of the car. Accordingly, there was no negligent on the part of the rider of the two wheeler. Accordingly, claimants not entitled to get compensation from the insurance company.



Thereby, the claim was dismissed.

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3. Challenging the order passed by the tribunal the claimant/appellants filed this appeal on the following grounds:

i. The learned Tribunal failed to consider the negligence on the part of the rider who drive the bike which was met with the accident. The rider of the bike was Appellant's brother, Mr.Krishna kesavan along with pillion rider who was appellant's son K.Ravikumar. The rider ought to have driven the bike in rash and negligent manner in order to reach the house warming ceremony earlier before mid-night and hence thereafter accident occurred due to rash and negligent driving of the rider.

ii. The learned Tribunal ought to have considered the fact that the accident occurred during COVID Pandemic period where there was full lockdown restrictions. As there is no traffic, the driver had rode the vehicle in high speed causing the accident.

iii. The Tribunal failed to appreciate the evidence of the D.w1 in proper perspective that the CCTV footage of Vikravandi Toll gate where it clearly proves that Appellant's brother. Mr.Krishna kesavan was the driver of the bike.

iv. The Tribunal failed to consider the fact that the appellant's son made a phone call to appellant after crossing Vikravandi Toll gate being Pillion driver.

v. The Tribunal failed to consider the fact in the FIR that the appellant's son made a phone call to appellant after crossing Vikravandi Toll gate at 12.05 pm later he received call from patrolling Sub Inspector, Raghavan that appellant's son and his brother met with an accident near Pillaiyar Kuppam road in Chennai to Kumbakonam National Highway road at 12.30pm.



4. By submitting the above grounds, the learned counsel for the appellants argued that the tribunal has erroneously concluded that the accident was happened due to the negligence driving of the unknown car not by the rider of the two wheeler based on the wrong assumptions and also failed to appreciate the evidence adduced on the side of the claimants. Hence, he prays to set aside the award passed by the tribunal and prays to grant compensation.

5. By way of reply, the learned counsel for the insurance company admits that the first respondent is the owner of the two wheeler bearing registration No. TN 14 Q 6967 and the same was insured with them at the time of the accident but disputed the manner of the accident stating that claimant not proved that accident was happened due to rash and negligent driving of the two wheeler namely Krishna Kannan. On the other hand, FIR given by the father of the deceased shows that two wheeler hit by unknown car. Therefore, the tribunal rightly concluded that manner of accident has not been proved as they alleged which needs no interference. Hence, he prays to dismiss this appeal.

6. Considering the both side submissions the facts reveal that deceased



Ravi Kumar son of claimants was aged about 18 years at the time of the accident. On the date of the accident, the claimants son was travelled as pillion rider in the two wheeler bearing registration No. TN 14 Q 6967 driven by the rider in a rash and negligent manner dashed against one car due to which the accident was happened both the rider and pillion rider died on the spot. Hence, he prayed for compensation form the respondents 1 and 2 who is the owner of the two wheeler and the same was insured with the second respondent/insurance company with second respondent but the second respondent relied FIR which was lodged based upon the complaint given by the father of the deceased. As per FIR, it reveals that immediately after the accident father of the deceased gave a complaint that accident was happened due to the unknown car based on that tribunal came to the conclusion that there was car involved in the said accident and accident also not been happened due to the rash and negligent driving of the two wheeler. But, it is settled proposition that recitals of the FIR is not a gospel truth and other facts and circumstances has to be taken into consideration while deciding the liability and negligence. The case in hand reveals that rider of the two wheeler Krishna kannan was the brother of the



deceased and naturally immediately after the accident the father of the deceased/claimant gave a complaint based on that FIR was lodged, during the cross examination by the second respondent P.W.1 categorically stated that two wheeler ridden by the Krishna Kannan belongs to the first respondent but after investigation the said FIR was closed stating that there was unknown vehicle involved in the accident. Accordingly, unknown vehicle involved not been able to traced out. Hence, the final report filed by closing the FIR. On seeing Motor Vehicle report, which was marked as Ex.P6, wherein it is stated that two wheeler scooter vehicle was damaged on right side damage was more high and the same was belongs to the first respondent. As per the M.V report two wheeler was driven by Krishna Kannan and deceased was pillion rider but the tribunal has failed to appreciate the said aspects which needs interference. Furthermore, counsel for the respondent pointed out that as per the rough sketch/Ex.X.1. there is involvement of one car. The learned counsel pointed out that there was a involvement of car also been mentioned, damaged particles of car also mentioned in the rough sketch which itself shows that car involved in the said accident.



7. Admittedly, on seeing the rough sketch there was damaged particles of car found nearby the occurrence place. Even assuming that car was involved, the manner of accident as well as damages caused to the two wheeler and as per the M.V report, which clearly proves that there was negligence on the part of the two wheeler at the time of the accident. Even there was a car involved but the claimant established that rider of the two wheeler also driven the two wheeler with rash and negligent manner. Furthermore, rider of the two wheeler is krishna kannan, which also proved through M.V report. Therefore, the deceased was pillion rider travelled in the two wheeler at the time of the accident due to the rash and negligent driving of the two wheeler as well as car the accident was happened. Considering the damages caused to the two wheeler this Court is inclined to fix 75% contributory negligence upon the two wheeler and 25% upon the unknown car.

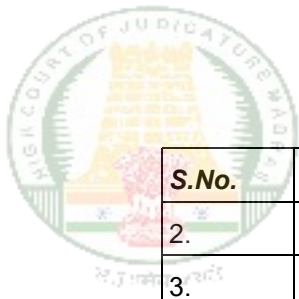
8. The insurance companies' another objection is that rider of the two wheeler not wearing helmet at the time of the accident. Case in hand, deceased was pillion rider. As discussed above, this Court fix 25% contributory negligence on the part of the unknown car. The first respondent's vehicle was



insured with the second respondent insurance company and as per the M.V report rider of the two wheeler possessed driving licence at the time of the accident. Hence, as a Insurance Company, the second respondent is liable to the pay the compensation.

9. As per the death certificate, deceased aged about 18 years at the the time of the accident. But as per the birth certificate, age of the deceased is 17 years. As per the birth certificate, this Court is inclined to fix 18 years as age of the deceased. According to the claimant, the deceased Ravikumar was student of the school when the accident was happened in the year 2020. Considering the cost of living and other amenities at the time of the accident, this Court is inclined to fix Rs.20,000/- as notional income of the deceased with 40% future prospects Accordingly, the claimants are entitled to Rs. 30,24,000/- $(20000+8000 \times 12 \times 18 - 1/2)$. Further, the accident was happened in the year 2020 hence this Court is inclined to fix Rs.88,000 for loss of consortium and Rs.16,500 for funeral expenses and Rs.15,000/- for loss of estate and Rs.15,000/- for transportation.

S.No.	Heads	Compensation awarded by this Court
1.	Loss of dependency	RS. 30,24,000/-



S.No.	Heads	Compensation awarded by this Court
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.88,000/-
4.	Funeral expenses	Rs.16,500/-
5.	Transportation charges	Rs.15,000/-
	Total	Rs. 31,58,500/- (75% of award amount is 23,68,875/-)

10. In view of the discussions made earlier, Second respondent is liable to pay 75% of the award amount. Accordingly, this Court is inclined to award **Rs. 23,68,875/-** as compensation to the appellant and remaining 25% of the award amount a sum of Rs. 7,89,125/- is liable to be paid by the rider of the two wheeler. The second respondent is directed to deposit above said award amount 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 MCOP NO.296 of 2021 on the file of Motor Accident Claims Tribunal (Special District Judge), Villupuram, within a period eight weeks from the date of receipt of a copy of this judgement. Both the appellants are entitled to the compensation equally. On such deposit being made, the appellants are permitted to withdraw the amount by filing application before the Tribunal. In so far as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the claimant(s).



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

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. The Motor Accident Claims Tribunal (Special District Judge), Villupuram.
2. The Section officer, V. R Section, High Court, Madras.



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T.V.THAMILSELVI J.
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