



CMA.No.2380 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 25.03.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.No.2380 of 2022

1.A.Geetha

2.A.Jayakumar

A.Vijaykumar (died)

3.Sheela Dorathi

... Appellants

Vs.

1.Kedhar

(R1 was set exparte in the trial Court)

2.ICICI Lombard General Insurance Company Limited,
Chota Bai Centre, 140, 3rd Floor,
Ungambakkam High Road,
Chennai – 600 034.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 29.09.2021 made in MACTOP.No.3731 of 2015 on the file of the Special Subordinate Judge No.2, to deal with MCOP Cases (Motor Accident Claims Tribunal), Chennai.



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For Appellants :Mr.C.Munusamy

For Respondents :Mr.B.Sivakolappan for R2

J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has come before this Court.

2. It is the case of the claimants that on 08.03.2015, the husband of the first claimant, father of the claimants 2 to 4 viz., Andrews died in a road accident. It is the case of the claimants that he was riding motorcycle along the GST Road, Chrompet, near T.B.Hospital from North to South direction. A Hero Honda motorcycle bearing registration No.TN-07AJ-3769 came in the opposite direction in a rash and negligent manner and dashed against the deceased. Due to the said impact, he sustained grievous injury and succumbed to injury at Rajiv Gandhi Government General Hospital, Chennai. Therefore, the claim petition was filed seeking compensation against the respondents as the offending vehicle belonged to the first respondent and insured with the second respondent.



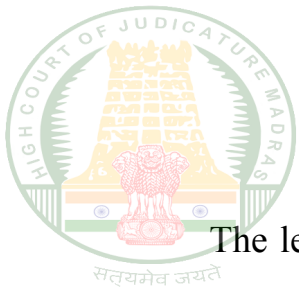
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3. Before the Tribunal, the first respondent owner of the vehicle remained ex-parte and the claim petition was contested by the second respondent insurer. It was the case of the second respondent that the accident had occurred only due to the negligence on the part of the deceased and hence they were not liable to pay compensation.

4. The Tribunal based on the evidence available on record came to the conclusion that the accident had occurred only due to the negligence on the part of the rider of Hero Honda motorcycle insured with the second respondent. However, the Tribunal fixed 10% contributory negligence on the part of the deceased for his failure to possess the proper driving licence. The amount payable to the claimants was quantified at Rs.8,97,000/-, after deducting 10% towards contributory negligence. Not satisfied with the quantum of compensation, the claimants have come before this Court.

5. The learned counsel appearing for the claimants would submit that failure to hold the valid driving licence cannot be the reason for fixing contributory negligence on the deceased and hence finding rendered by the Tribunal on the question of contributory negligence needs to be set aside.



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The learned counsel further submits that the amount of Rs.9,500/- fixed by the Tribunal as notional income is very much on the lower side and hence the same has to be enhanced.

6. The learned counsel appearing for the second respondent/Insurance Company would submit that the deceased possessed driving licence [marked as Ex.P9] only for driving the car and he was not authorized to drive a two wheeler and hence the Tribunal was right in fixing 10% contributory negligence on the part of the deceased. The claimants have not produced any documents to prove the avocation and income of the deceased and hence the Tribunal was justified in fixing Rs.9,500/- as notional income of the deceased.

7. It is seen from Ex.P9 driving licence of the deceased, he was authorised to drive only Light Motor Vehicle and he was not authorised to drive two wheeler. The Apex Court in ***Sudhir Kumar Rana vs. Surinder Singh and others*** reported in ***CDJ 2008 SC 862 = (2008) 12 SCC 436***, while considering non-possession of driving license observed as follows:-

“8. If a person drives a vehicle without a licence, he



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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.”

8. The Tribunal fixed 10% contributory negligence on the deceased only on the ground he did not possess valid driving licence. Non-possession of driving licence *per se* is not a ground to fix contributory negligence on the part of the deceased, when there is no positive evidence to show that the deceased contributed to the accident. In the case on hand, merely because the deceased did not possess valid driving licence to drive motorcycle, the Tribunal was not justified in fixing contributory negligence in the absence of any positive evidence to show that by his act, he



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contributed to the negligence. Therefore, the finding of the Tribunal with regard to the contributory negligence is set aside.

9. The claimants in their claim petition have stated that the deceased was a driver earning Rs.11,000/- per month. However, in order to prove the avocation and income, the claimants have not produced any documents. In case on hand, the accident had occurred in the year 2015. Taking into consideration, the date of accident and cost of living, this Court feels the amount of Rs.11,000/- claimed by them as income of the deceased cannot be treated as excessive one. Therefore, this Court is inclined to adopt Rs.11,000/- as notional income of the deceased. As per Ex.P9-driving licence, the Tribunal fixed the age of the deceased as 59 years. Therefore, the claimants are entitled to 10% enhancement towards future prospects. There were four claimants at the time of accident. Therefore, 1/4th of the amount has to be deducted towards personal expenses of the deceased.



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10. It is brought to the notice of this Court, the 3rd claimant namely A.Vijayakumar died pending original petition. However, his estate will go to the mother, the 1st claimant in her capacity as class 1 legal heir.

11. In view of the discussions made earlier, the loss of dependency is fixed at Rs.9,80,100/- (Rs.11,000/-x1.1x12x9x3/4). The amount awarded by the Tribunal under the various other conventional heads viz., Loss of consortium, loss of estate and funeral expenses are confirmed and 10% of contributory negligence is set aside.

12. In view of the discussions made earlier, the award passed by the Tribunal is modified as follows:

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court
1.	Loss of dependency	Rs.8,46,450/-	Rs.9,80,100/-
2.	Loss of Consortium	Rs.1,20,000/-	Rs.1,60,000/- (4 members)
3.	Loss of Estate	Rs.15,000/-	Rs.15,000/-
4.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
	Total	Rs.9,96,450/-	Rs.11,30,100/-



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Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court
	Less 10% of contributory negligence	Rs.99,645 Rs.8,96,805/- rounder off to Rs.8,97,000	Rs.11,30,100/-

13. In view of the discussions made earlier, the compensation awarded by the Tribunal is enhanced to Rs.11,30,100/-, The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount 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 MACTOP.No.3731 of 2015, on the file of Special Sub Judge No.2 to deal with MCOP Cases (Motor Accident Claims Tribunal, Chennai, 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 their respective award amount by filing appropriate application before the Tribunal. The 1st claimant is entitled to Rs.7,30,100/- and the claimants 2 and 4 are entitled to Rs.2,00,000/- (each)



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14. With the above directions, the Civil Miscellaneous Appeal

is partly allowed. No costs.

25.03.2025

Index : Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

1.The Motor Accident Claims Tribunal Authority,
Special Subordinate Judge No.2, Chennai.

2.The Section Officer

VR Section, High Court, Madras.



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S.SOUNTHAR, J.

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