



C.M.A.No.1233 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 29.04.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.1233 of 2022
and C.M.P.No.8867 of 2022

National Insurance Company Limited
Rep. by its Manager
Anuradha Complex
3rd Floor, Opp. Raja Theatre
Bangalore Road
Krishnagiri-635 001.

... Appellant

VS.

1.Megala

2.Minor Gopika

3.Minor Sathana

4.Minor R.Sharan

*(Minors 2 to 4 are represented by their N.F/Mother
Megala 1st Respondent)*

5.Samukhan

6.G.Parthiban

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.01.2021 in



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M.C.O.P.No.615 of 2019 on the file of the Motor Accident Claims Tribunal,
Special District Court (MACT) (District Judge), Krishnagiri.

For Appellant : M/s.R.Sree Vidhya

For R1 to R5 : Mr.S.Murugan

For R6 : No Appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the Insurer challenging the award passed by the Motor Accident Claims Tribunal, Special District Court (MACT), Krishnagiri in M.C.O.P.No.615 of 2019, dated 08.01.2021.

2. The respondents 1 to 5 filed a claim petition seeking compensation for the death of husband of the 1st respondent, father of the minor respondents 2 to 4 and son of the 5th respondent namely Ramesh. According to the claimants, the deceased was driving his Yamaha Crux Motor Bike bearing Registration No.TN-24-A-8070 in Krishnagiri to Kuppam Road



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slowly and steadily by following all traffic rules. At that point of time, Honda Splendor Bike belonged to the 6th respondent herein insured with the appellant was driven by 6th respondent in a rash and negligent manner and dashed against the vehicle of the deceased. As a result of the accident, the deceased sustained fatal injuries and died. Hence, the claim petition was filed seeking compensation of Rs.30,00,000/-.

3. The Appellant/Insurance Company opposed the claim petition by denying the manner of accident as described in the claim petition. It was the case of the Appellant-Insurer and the 1st respondent in the original petition that the accident had occurred only due to the negligence on the part of the deceased.

4. Before the Tribunal, the 1st respondent/1st claimant was examined as PW.1 and two other witnesses were examined as PW.2 and PW.3 and 15 documents were marked as Exs.P1 to P15 on behalf of the claimants. On behalf of the 6th respondent herein, no witness was examined and no document was marked. On behalf of the Appellant/Insurance Company, the Assistant, RTO Office, Krishnagiri was examined as RW.1 and the Sub-



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Inspector of Police, Maharajakadai Police Station was examined as RW.2

and 8 documents were marked as Exs.R1 to R8.

5. The Tribunal based on the oral evidence of PW.1, PW.2, R.W.2 and contents of FIR-Ex.P1, came to the conclusion that accident had occurred only due to negligence on the part of the driver of the vehicle insured with the appellant-insurer. The compensation payable to the claimants was quantified at Rs.17,48,750/-. Aggrieved by the said award, the Insurer of the offending vehicle has come before this Court.

6. The learned counsel appearing for the Appellant/Insurance Company would submit that the deceased failed to wear helmet and hence, the Tribunal should have fixed atleast 15% contributory negligence on the part of the deceased. The learned counsel also submitted that the deceased dashed against the parked vehicle and therefore, there is contributory negligence on his part.

7. The learned counsel appearing for the respondents 1 to 5/claimants would submit that the Tribunal based on the documentary evidence



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available on record came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the vehicle insured with the appellant-insurer and the same requires no interference.

8. In order to prove the negligence on the part of the driver of the vehicle insured with the appellant, the 1st claimant was examined as PW.1 and she was not an eye-witness to the incident, therefore, her evidence cannot be taken into consideration to decide the negligence. PW.2 is an eye-witness, who deposed about the negligence on the part of the vehicle insured with the appellant. Ex.P1 is the FIR registered against the 6th respondent-driver cum owner of the offending vehicle. RW.2 is the Sub-Inspector of Police, who deposed about the filing of criminal case against the driver of the vehicle insured with the appellant. He clearly deposed that final report was filed against the driver of the vehicle insured with the appellant.

9. The Tribunal based on the evidence of PW.2, contents of Ex.P1-FIR and RW.2, rightly came to the conclusion that the negligence was on the part of the driver of the vehicle insured with the appellant and the same require no interference from this Court.



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WEB COPY 10. It is vehemently contended by the learned counsel appearing for the appellant-insurer that the deceased failed to wear helmet. Therefore, certain amount of contributory negligence shall be fixed on the deceased. Though appellant raised the said plea in their counter, PW.1 in her evidence clearly deposed that at the time of accident, the deceased was wearing helmet. The evidence of PW.1 was also corroborated by evidence of PW.2. In the light of the categorical assertion made by the eye-witness PW.2 and evidence of PW.1, this Court is not inclined to accept the argument made by the learned counsel appearing for the appellant that contributory negligence shall be fastened on the deceased for his failure to wear helmet. The best person to speak about the accident and regarding non-wearing of helmet by the deceased is the driver of the vehicle insured with the appellant. However, the appellant has not examined the driver of the insured vehicle. In these circumstances, the submission made by the learned counsel for the appellant on the question of negligence is not appealable to this Court.

11. As far as quantum of compensation is concerned, the Tribunal fixed very meagre notional income of Rs.9,000/- for the accident that had



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occurred in the year 2017. Therefore, the amount awarded by the Tribunal on the head loss of dependency is a conservative one. In any event, the claimants have not filed any appeal challenging the quantum. In these circumstances, I do not find anything to interfere with the award passed by the Tribunal.

12. Accordingly, the Civil Miscellaneous Appeal is dismissed by confirming the award passed by the Tribunal. No costs. Consequently, the connected civil miscellaneous petition is closed.

29.04.2025

Index :Yes/No
Speaking order :Yes/No
Neutral Citation :Yes/No
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To

1.The Motor Accident Claims Tribunal,
Special District Court (MACT) (District Judge),
Krishnagiri.

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



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S.SOUNTHAR, J.

dm

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