



CMA.No.3378 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :06.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.3378 of 2021

M/s.Chola MS General
Insurance Company Limited
Rep by its Branch Manager
No.9,I Floor
Rajaji Road
State Bank of Travancore Upstairs
Peramanur
Salem 636 007

... Appellant

Vs.

1.Chithra
2.Rajalakshmi
3.Prabakaran
4.Santhi
5.Sathiyaraj

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, pleaded to set aside the judgment and decree dated 28.01.2020 passed in MCOP.No.675 of 2018 on the file of Motor Accidents Claims Tribunal, Special District Court at Krishnagiri.

For appellant : Mr.J.Michael Visuvasam

For Respondents 1 to 4 : No appearance

For respondent 5 : Served-No appearance



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JUDGMENT

The insurer of the offending vehicle is the appellant herein. The respondents 1 to 4 are wife and children of the deceased. The 5th respondent is the owner of the offending vehicle insured with the appellant.

2. According to the claimants, when the husband of 1st claimant and the father of the claimants 2 to 4 namely Srikannan was proceeding on the left-hand side of the road in his motorcycle, on 25.03.2017 at about 15.30 hrs, the Mahendra Pickup Van owned by the 5th respondent insured with the appellant herein came in the opposite direction. The driver of the Mahendra van drove the vehicle in a rash and negligent manner and hit the two-wheeler of the victim. As a result of which, the victim was thrown out from the motor cycle and had sustained fatal injuries. It is stated that the victim died on the spot. It is also claimed that the victim was aged about 49 years at the time of accident and he was engaged in agriculture and cattle business.

3. The claim petition was resisted by the appellant/ Insurance



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company mainly on the ground of negligence. It is the specific case of the appellant that the deceased came in the wrong direction and colluded with Mahendra pickup van owned by the 5th respondent which was proceeding slowly on the left-hand side of the road in the opposite direction. Therefore, it is the specific case of the appellant that the accident had occurred only due to the rash and negligent driving of the deceased. The appellant also denied the avocation and income of the deceased as claimed in the claim petition.

4. On behalf of the claimants, the first claimant was examined as PW1, and an eyewitness was examined as PW2. On behalf of the claimants, 18 documents were marked as Exhibit P1 to Exhibit P18. The 5th respondent, owner of the vehicle remained *ex-parte*. On behalf of the appellant/Insurance company, a Junior Assistant working in RTO office was examined as RW1. A Sub-Inspector of Police from the concerned police station was examined as RW2. The Legal Manager of the Insurance company was examined as RW3. On behalf of the appellant, five documents were marked as Exhibit R1 to Exhibit R5.

5. The Tribunal, on appreciation of evidence available on record, came to the conclusion that the accident had occurred due to the rash



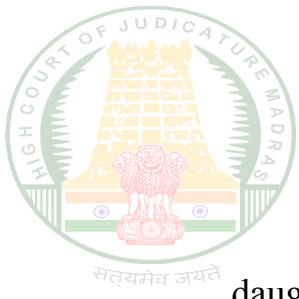
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and negligent driving of the van owned by the 5th respondent and insured with the appellant.

6. The Tribunal fixed notional income of Rs.9,000/- and along with other conventional damages, a sum of Rs.14,21,328/- was fixed as compensation. Aggrieved by the said award, the appellant/ the Insurance company has come before this court.

7. The learned counsel for the appellant advanced his arguments on the question of negligence as well as quantum of compensation. The learned counsel, by placing reliance on the final report filed by the police, which was marked as Exhibit R5 through RW2, would submit that after investigation, the FIR registered against the driver of the 5th respondent's vehicle was closed as 'mistake of fact'. Therefore, the learned counsel submitted that the accident had happened due to the rash and negligent driving of the deceased himself and hence, the Tribunal committed error in fastening the liability on the Insurance company. The learned counsel further submitted that two of the claimants, namely claimants 2 and 4 are married daughters. Therefore, the Tribunal committed error in deducting one-fourth of the amount by taking the dependents as 4. It is his submission that two married



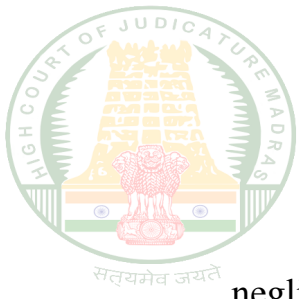
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daughters ought not to have been treated as dependents of the deceased.

8. In order to prove the manner of accident, the first claimant was examined as PW1 and an eyewitness was examined as PW2. The first claimant is the wife of the deceased and she was not an eyewitness. However, PW2 was an eyewitness, who proceeded behind the vehicle of the deceased at the time of accident. He clearly deposed that the accident had taken place due to the rash and negligent driving of the driver of the Mahendra pickup van. The deposition of PW2 is very well corroborated by the averments in the FIR marked as Exhibit P1.

9. The Tribunal is justified in placing reliance on Exhibit P1 and evidence of PW2, when nothing is elucidated in the cross-examination of PW2. Though the learned counsel for the appellant placed much reliance on the final report which was marked as Exhibit R5, this court is not inclined to place any reliance on the same, in view of the fact that there is nothing on record to suggest, before closing the criminal case, a notice was issued to the complainant and he was given an opportunity before the closure of the case as mistake of fact. Therefore, the Tribunal is justified in placing reliance on evidence of eyewitness, PW2 and coming to the conclusion that accident had occurred due to the rash and



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negligent driving of the Mahendra pick-up van owned by the 5th respondent and insured with the appellant. Hence, the submission made by the learned counsel for the appellant on the question of negligence is not acceptable to this court.

10. On the question of quantum, the learned counsel for the appellant submitted that the Tribunal ought not to have treated two married daughters of the deceased as his dependents and taken number of dependents as 4 and deducted one-fourth amount towards the personal expenses of the deceased. It is his submission that eligible dependents are only two persons. Therefore, the Tribunal ought not to have deducted one-fourth amount.

12. The accident had taken place in the year 2017. However, the Tribunal fixed notional income only at Rs.9000/-.Even if this court fixes notional income at Rs.15000/- for the accident of the year 2017 and one-third amount is deducted, the claimants are entitled to more than the amount fixed by the tribunal. Taking into consideration the notional income fixed by the Tribunal, which is on lower side, this Court feels no interference is called for on the question of quantum



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13. Accordingly, both the submissions made by the learned counsel for the appellant are negatived. Hence, the Civil Miscellaneous Appeal stands dismissed. No costs.

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Index: Yes/No
Internet: Yes/No
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To

1. Motor Accident Claims Tribunal,
Special District Court at Krishnagiri
2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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