



C.M.A.Nos.2660 and 2662 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2025

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.Nos.2660 and 2662 of 2021
And
C.M.P.Nos.15206 and 15210 of 2021**

M/s.United India Insurance Co. Ltd.,
Salem Main Road,
Kallakurichi

... Appellant in both the C.M.As.

Vs.

1.Ushanandhini
2.Saranya
3.Kandasamy

... Respondents in C.M.A.2660/2021

1.Karuppaiya
2.Rani
3.Kandasamy

... Respondents in C.M.A.2662/2021

Common Prayer:

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 06.12.2018 made in M.C.O.P.Nos.27 and 28 of 2018 respectively, on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Kallakurichi.

For Appellants : Mr.S.Arunkumar
in both the C.M.As.

For Respondents : M/s.Amar Dinesh Bhai Pandiya



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in both the C.M.As.

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COMMON JUDGMENT

The second respondent Insurance Company before the Motor Accidents Claims Tribunal, is the appellant herein. These appeals have been filed against the judgment and decree dated 06.12.2018 made in M.C.O.P.Nos.27 and 28 of 2018 respectively, on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Kallakurichi.

2.Since the issue involved in these civil miscellaneous appeals are interrelated, they are heard together and disposed of by way of a common judgment.

3.The brief facts of the case is that on 27.12.2017 at about 10 hours, the deceased Rangarajan (M.C.O.P.No.27 of 2018) was driving the car bearing Registration No.TN-10-AC-7536 with one Jayakumar (M.C.O.P.No.28 of 2018) as occupant in Ulundurpettai to Tiyyagadurugam Road near Valavandankuppam Kali Temple. At that time, the driver of the lorry bearing Registration No.TN-34-M-7524 owned by the third respondent and insured with the appellant drove the vehicle in a rash and negligent manner and dashed against the car, due to which, the deceased lost their lives.



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4. Thereafter, the dependants of the deceased Rangarajan and Jayakumar filed claim petitions before the Motor Accidents Claims Tribunal, claiming compensation of Rs.1 Crore and Rs.50 Lakhs respectively. After adjudication, the Motor Accidents Claims Tribunal, fixed 20% contributory negligence on the deceased Rangarajan since he did not possess valid driving licence and fixed 40% liability on the owner and insurance company of the car bearing Registration No.TN-10-AC-7536 and 40% liability on the appellant. The Tribunal directed the appellant to deposit 80% of the award amount and to recover 40% of the award amount from the owner and insurance company of the car bearing Registration No.TN-10-AC-7536.

5. The Tribunal awarded the following compensation to the claimants/ petitioners therein:.

(i) In M.C.O.P.No.27 of 2018, the tribunal arrived at a total compensation of Rs.28,99,800/- and awarded a sum of Rs.23,20,000/- [80% of Rs.28,99,800/-] as compensation to the claimants along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and costs.



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(ii) In M.C.O.P.No.28 of 2018, the tribunal arrived at a total compensation of Rs.15,88,945/- and awarded a sum of Rs.12,71,200/- [80% of Rs.15,88,945/-] as compensation to the claimants along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and costs.

6. In order to prove the case, the first claimant in both the claim petitions examined themselves as P.W.1 and P.W.2 and also examined one Senthilkumar as P.W.3 and marked exhibits Ex.P.1 to Ex.P.23. On the side of respondents therein namely, third respondent herein and appellant herein one witness was examined as R.W.1 and one exhibit was marked as Ex.R.1.

7. The learned counsel appearing for the appellant submitted that the Tribunal ought to have fixed 50% contributory negligence on the driver of the car, instead fixed only 20% contributory negligence on the driver of the car, which is not sustainable one. The learned counsel further submitted that both the deceased are bachelors and hence, the Tribunal ought to have deducted $\frac{1}{2}$ of the income towards personal expenses, instead deducted $\frac{1}{3}$ towards personal expenses,



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which is not sustainable and further submitted that the compensation awarded under the other heads are also highly excessive.

8.The learned counsel appearing for the respective claimants submitted that the dependants of the deceased not produced the driving licence before the Tribunal. It is the duty caste upon the appellant Insurance Company or the owner of the vehicle insured with the appellant to establish that the driver of the car did not possess valid driving licence. In the absence of any concrete proof, the Tribunal fastened 20% contributory negligence on the driver of the car. The learned counsel further submitted that inadvertently, the Tribunal deducted 1/3 towards personal expenses.

9.Heard the arguments advanced on either side and perused the materials available on record.

10.Perusal of impugned judgment reveals that the Tribunal after considering all the factual aspects and by relying upon the decisions of the Hon'ble Division Bench of this Court reported in 2018 (2) TNMAC 168 and 2017 (2) TNMAC 538, fixed 20% contributory negligence on the deceased Rangarajan since he did not possess valid driving licence



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and fixed 40% liability on the owner and insurance company of the vehicle bearing Registration No.TN-10-AC-7536 and 40% liability on the appellant, which warrants no interference. The Tribunal has directed the appellant to deposit 80% of the award amount and to recover 40% of the award amount from the owner and insurance company of the vehicle bearing Registration No.TN-10-AC-7536, which also warrants no interference and the same is confirmed.

11.Coming to the quantum of compensation, the Hon'ble Apex Court in Syed Sadiq case fixed a sum of Rs.6,500/- as notional monthly income of the vegetable vendor in the year 2008. In the present case, the accident took place during the year 2017. If we apply the law laid down by the Hon'ble Apex Court in Syed Sadiq case, a sum of Rs.15,000/- ought to have been fixed as the notional monthly income of the deceased, however, the Tribunal has fixed only a sum of Rs.12,000/- and Rs.6,000/- respectively. Hence, this Court is not inclined to interfere with the deduction of 1/3 towards personal expenses. The quantum of compensation awarded by the tribunal in both the claim petitions, in the opinion of this Court, is just and reasonable and the same warrants no interference.



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12.The civil miscellaneous appeals are dismissed. The judgment and decree dated 06.12.2018 made in M.C.O.P.Nos.27 and 28 of 2018 respectively, on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Kallakurichi, is confirmed. No costs. Consequently, the connected miscellaneous petitions are closed.

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
III Additional District Judge, Kallakurichi.



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