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CMA NO.521 OF 2024 & CROS.OBJ.NO.41 OF 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 06 / 12 / 2024

JUDGMENT PRONOUNCED ON : 02 / 01 / 2025

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NO.521 OF 2024

AND

CMP NO.5171 IN CMA NO.521 OF 2024

AND

CROS.OBJ.NO.41 OF 2024

CMA NO.521 OF 2024

The Managing Director
M/s.Cholamandalam MS General
Insurance Company Limited
Old No.10, New No.23, 100 Feet Road,
Sundararaja Nagar, Mudaliyarpeth,
Pondicherry – 605 004.

... Appellant / 2nd Respondent

Vs.

1.Santhi ... 1st Respondent / 1st Petitioner

2.Minor.Hari Prasad Yadav ... 2nd Respondent / 2nd Petitioner

3.Minor.Girish Yadav ... 3rd Respondent / 3rd Petitioner
(R2 and R3 Rep. by their mother
and next friend Shanthi)

4.Arumugham ... 4th Respondent / 4th Petitioner



CMA NO.521 OF 2024 & CROS.OBJ.NO.41 OF 2024

5.Rukmani

... 5th Respondent / 5th Petitioner

6. Madan Nath

... 6th Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated July 21, 2023 passed in M.C.O.P.No.764 of 2021 by the Motor Accident Claims Tribunal, Special District Court -II, Cuddalore.

For Appellant : Mr.J.Michael Visuvasam

For Respondents 1 to 5 : Mr.F.Terry Chella Raja

For Respondent 6 : Left

CROS.OBJ.NO.78 OF 2024

1.Santhi

2.Minor.Hari Prasad Yadav

3.Minor.Girish Yadav

(Note: Cross Objectors 2 and 3 are represented by their mother and next friend - Shanthi)

4.Arumugham

5.Rukmani

... Cross Objectors /
Respondents 1-5

Vs.

1.The Branch Manager

M/s.Cholamandalam MS



CMA NO.521 OF 2024 & CROS.OBJ.NO.41 OF 2024

General Insurance Company Limited,
Old No.10, New No.23, 100 Feet Road,
Sundararaja Nagar, Mudaliyarpet,
Pondicherry.

2. Madan Nath

... 1st respondent/
Appellant
... 2nd respondent/
6th Respondent

PRAYER: Cross Objection filed under Order XLI Rule 22 of Code of Civil Procedure, 1908 for enhancement of compensation awarded vide Award dated July 21, 2023 passed in M.C.O.P.No.764 of 2021 by the Motor Accident Claims Tribunal, Special District Court -II, Cuddalore.

For Cross Objectors : Mr.F.Terry Chella Raja

For Respondent -2 : Mr.J.Michael Visuvasam

For Respondent-1 : Left

COMMON JUDGMENT

R.SAKTHIVEL, J.

Feeling aggrieved by the 'Award dated July 21, 2023 passed in M.C.O.P.No.764 of 2021 by the 'Motor Accident Claims Tribunal, (Special District Court No.-II), Cuddalore' ['Tribunal' for short], the second respondent therein - Insurance Company has preferred C.M.A.No.521 of 2024 praying to set aside the Award, while the



petitioners therein have preferred Cross Objection No.41 of 2024 praying to enhance the compensation. This Common Judgment will govern both, the Civil Miscellaneous Appeal and the Cross Objection.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Motor Claims Original Petition.

3. By the impugned Award, the Tribunal has computed a compensation of Rs.59,42,375/-, out of which 10% has been deducted towards contributory negligence on the part of deceased and thus, the Tribunal awarded a compensation of Rs.53,48,200/- to the petitioners 1 to 5 along with interest at 7.5% per annum from the date of filing of claim petition till the date of deposit.

PETITIONERS' CASE:

4. The first petitioner is the wife of the deceased – Srinivasan. Second and third petitioners are his minor sons. Fourth and fifth petitioners are his parents. On the fateful day viz., May 1, 2021, at about 05.30 p.m., the deceased–Srinivasan was riding his motorcycle bearing Registration No.TN-91-Y-5555, on Virudachalam to Cuddalore Main



Road. While so, the First respondent's Honda Activa bearing Registration No.TN-31-CW-9015 travelling in the same direction, at a high speed in a rash and negligent manner, hit behind the deceased's motorcycle, as a result of which, the deceased was thrown off the motorcycle. The deceased sustained grievous injuries on his head and multiple fractures all over his body. Immediately, he was taken to Government Hospital, Virudachalam and subsequently he was transferred to JIPMER, Pondicherry. Thereafter, he succumbed to the injuries on May 2, 2021.

4.1. At the time of accident, the deceased was aged about 45 years, and was earning a sum of Rs.2,00,000/- per month being the proprietor of 'Srinivasa Transport and Contractor'.

4.2. The first petitioner lodged a complaint before Mandharakuppam Police station against the driver of an unregistered motorcycle. After investigation, police officials filed Ex.P.8 - Final Report as against the rider of the Honda Activa Scooter bearing Reg.No.TN-31-CW-9015. According to the petitioners, the accident occurred only due to the rash and negligent riding of the rider of the Honda Activa Scooter; the first respondent's vehicle was insured with the second respondent –



Insurance Company; and hence, both the respondents are liable to pay compensation to the petitioners. Accordingly, the petitioners filed the Claim Petition before the Tribunal seeking compensation of Rs.2,00,00,000/- (Rupees Two Crores only) along with interest and costs.

RESPONDENTS' CASE

5. The first respondent remained absent and therefore, was set *ex-parte* before the Tribunal.

6. The second respondent filed counter denying the Claim Petition averments and also contending that the first respondent had no valid driving licence at the time of accident. According to them, the deceased was riding the motorcycle and suddenly crossed the road and hence, he also contributed to the accident. Hence, the owner and the Insurance company of the deceased travelled motorcycle are also necessary parties to the proceedings. Therefore, this petition is liable to be dismissed.

TRIBUNAL



7. The Tribunal framed the following points for consideration:-

- i) *Whether the accident took place due to the rash and negligent act of the driver of the vehicle bearing Reg.No.TN-31-CW-9015?*
- ii) *Whether the respondents are liable to pay compensation?*
- lii) *Whether the petitioners are entitled for the compensation ? If so, from whom and what is the quantum?*
- iv) *To what other reliefs, the petitioners are entitled to?*

8. Before the Tribunal, on the side of the petitioners, the first petitioner / wife of the deceased - Srinivasan was examined as P.W.1, one Jayasankar, eyewitness to the accident, was examined as P.W.2 and 15 documents were marked as Ex-P.1 to Ex-P.15. The respondents did not let in any oral or documentary evidence.

9. The Tribunal after considering the pleadings, oral and documentary evidence and upon hearing either side, held that the accident occurred due to the rash and negligent riding of the Honda Activa belonging to the first respondent and fixed 10% contributory negligence



on the part of the deceased for non-wearing of helmet and directed the second respondent-Insurance Company, being the insurer of the Honda Activa, to pay a sum of Rs.53,48,200/-, being 90% of the award amount, as compensation to the petitioners 1 to 5. The breakup of the amount awarded by the Tribunal is summarised below:-

Sl.No.	Head	Amount
1	Loss of Income Annual Income of the deceased (Rs.4,36,875/- x 13)	Rs.56,79,375.00
2	Loss of Spousal consortium to 1 st petitioner	Rs.44,000.00
3	Loss of Parental Consortium to 2 nd and 3 rd petitioners)	Rs.88,000.00
4	Loss of filial Consortium to 4 th and 5 th petitioners	Rs.88,000.00
5	Funeral expenses and loss of estate	Rs.33,000.00
6	Transport Expenses	Rs. 10,000.00
	Total	Rs.59,42,375.00
	Deduct 10% of award amount for contributory negligence	Rs.5,94,238.00
	Total Compensation payable to the petitioners	Rs.53,48,137.00 Rounded off to Rs.53,48,200.00

10. Feeling aggrieved by the said Award, the second respondent – Insurance Company has preferred the Civil Miscellaneous Appeal. Dissatisfied with the Award amount, the petitioners have preferred the Cross Objection praying to enhance the Award amount.



ARGUMENTS

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11. The learned Counsel for the appellant / second respondent- Insurance Company argued that the Tribunal has wrongly fixed the income of the deceased at Rs.40,000/- p.m. which is excessive and unjustified. The petitioners have not produced any income tax return of the deceased in respect of his income from business. Further, the Tribunal determined the loss of dependency at Rs.56,79,375/- which is incorrect and exorbitant. Accordingly, he prayed to allow the Civil Miscellaneous Appeal and set aside the Award.

12. Per contra, learned Counsel for the Cross Objectors / petitioners submitted that the Tribunal ought not to have deducted 10% of the compensation towards contributory negligence on the ground that the deceased - Srinivasan was not wearing helmet at the time of accident, when the 2nd respondent failed to prove the same. Further he contended that the deceased was aged about 45 years and owned two lorries and earned Rs.2,00,000/- per month at the time of accident, whereas the Tribunal underestimated the income of the deceased at Rs.40,000/- per month. To prove the income, the petitioners marked as Ex-P.9 and



Ex-P.11, the Registration Certificates of the two lorries and the Account Statement of the deceased respectively. The Tribunal ought to have awarded just compensation for the death of the deceased in the accident by applying proper multiplier as per law. Accordingly, he prayed to allow the Cross Objection and enhance the compensation.

DISCUSSION

13. This Court has considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the second respondent-Insurance Company, and has also perused the evidence on record and the impugned Award passed by the Tribunal.

14. The accident is admitted. As regards negligence, the question is whether the deceased contributed to the accident or not. The case of the second respondent is that the deceased suddenly crossed the road, without following the traffic rules and thus contributed to the accident. But the second respondent has not produced any substantial evidence to support the said averment. At the time of trial, the rider of the Honda Activa Scooter was not examined by the second respondent. The



Tribunal held that the accident occurred due to the rash and negligent riding of the first respondent's Honda Activa Scooter and found 10% negligence on the part of the deceased for non-wearing of helmet.

15. As far as contributory negligence is concerned, in Ex-P.5-Post-mortem Report, it is stated that the deceased sustained grievous Cranio-Cerebral injuries in the accident. It is evident from the Post-mortem Report that only because of the head injuries sustained by the deceased, his death had occurred. Further, there is no evidence to suggest the contra that the deceased was wearing helmet at the time of accident. If the deceased had worn helmet at the time of accident, his death could have been avoided. Thus, by non-wearing helmet, the deceased had also contributed to the accident. In these circumstances, this Court is of the view that the Tribunal has rightly held that the accident occurred due to the negligence on the part of the rider of first respondent's Honda Activa and rightly fixed 10% contributory negligence on the part of the deceased for non-wearing of helmet. Thus, this Court has no reason to interfere with the findings of the Tribunal regarding negligence.



16. As far as the quantum of compensation is concerned, according to the petitioners, the deceased was the proprietor of 'Srinivasa Transport and Contractor' and earning a sum of Rs.2,00,000/- per month. To prove the same, the petitioners had produced the documents, namely Ex-P.9 to Ex-P.11. Admittedly, there is no direct evidence on the monthly income of the deceased at the time of accident. On a perusal of Ex.P.9 – Copy of Registration Certificates of two Lorries bearing Registration Nos.TN-11-J-9121 & TN-55-AK-3272 respectively, it is observed that the deceased owned the two lorries in his name and that they were maintained by him, by paying Insurance Premium. Further, it is alleged by the petitioners that the name of borrower viz., “N.Sivasankar” in Ex.P.14 – Finance Company Pass Book, but the petitioners failed to examine the said borrower to prove the monthly loan amount to the deceased. Further, Ex.P.11- Bank Statement would go to show that the deceased had received various payments by cash as well as by cheque and that he withdrew the same. However, the petitioners did not file Books of Account to show the monthly turnover of the business nor the Statement of Monthly Profit. That apart, the petitioners have not chosen to file Annual Income Tax Returns to prove his monthly income. Ex-P.11 – Bank Statements cannot



be taken as direct proof of actual income of the deceased. The deceased being a business man would have naturally had a significant cash flow in his bank account, but they do not conclusively prove the alleged income of the deceased. In these circumstances, this Court is of the view that the Tribunal is right in notionally fixing Rs.40,000/- as the monthly income of the deceased.

17. The age of the deceased being 46 years, the Tribunal has rightly applied 25% future prospects, after deducting income tax from the annual income of the deceased, and has also rightly deducted 1/4th thereof towards personal expenses of the deceased, and rightly applied the multiplier of 13 to arrive at the compensation of Rs.56,79,375/- under the head “loss of dependency”. Further, the Tribunal enhanced the conventional head by 10%, which is in tune with the decision of the Hon’ble Supreme Court in *National Insurance Company Limited v. Pranay Sethi & Ors* reported in (2017) 16 SCC 680. This Court does not find any interference with the same.

18. Thus, this Court has no reason to interfere with the Award of the Tribunal. Both, the Civil Miscellaneous Appeal and the Cross Objection are devoid of merits and liable to be dismissed.



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CONCLUSION

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19. In the result, the Civil Miscellaneous Appeal and the Cross Objection are dismissed, and the Award dated July 21, 2023 passed in M.C.O.P.No.764 of 2021 by the Tribunal is hereby confirmed. In view of the facts and circumstances of this case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[J.N.B., J.]

[R.S.V., J.]

02 / 01 / 2025

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
kkd /tk

To

The Motor Accident Claims Tribunal
Special District Court -II,
Cuddalore.



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CMA NO.521 OF 2024 & CROS.OBJ.NO.41 OF 2024

J. NISHA BANU, J.

AND

R. SAKTHIVEL, J.

kkd/tk

PRE-DELIVERY COMMON JUDGMENT MADE IN
CMA NO.521 OF 2024
AND CROS.OBJ.NO.41 OF 2024

02 / 01 / 2025