# IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2025

CORAM

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

C.M.A.No.2340 of 2024
and
Cross Objection No.77 of 2024
and
C.M.P.No.18639 of 2024

**CMA.No.2340 of 2024**
Reliance General Insurance Co.Ltd.,
No.6, Reliance House,
Haddows Road, Nungambakkam,
Chennai – 600 006. ..Appellant

Vs.

1. Emayavalli,
   W/o Late Kannan

2. Minor Vaishnavi,
   D/o Late Kannan

3. Minor Dhashwin,
   S/o Late Kannan

4. Shantha,
   W/o Ramachandran

5. Ramachandran

S/o Madhavan

6. Senthilkumar,
   S/o Mohan ... Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the order dated 22.06.2022 passed in M.C.O.P.No.6 of 2020 on the file of Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellant : Mr.G.Vasudevan

For Respondents : Mr.Terry Chella Raja
for R1 to R5

**Cross Objection No.77 of 2024**

1. Emayavalli,
   W/o Late Kannan

2. Minor Vaishnavi,
   D/o Late Kannan

3. Minor Dhashwin,
   S/o Late Kannan

4. Shantha,
   W/o Ramachandran

5. Ramachandran
   S/o Madhavan ..Appellants

Vs.

1. Reliance General Insurance Co.Ltd.,
   No.6, Reliance House,
   Haddows Road, Nungambakkam,
   Chennai – 600 006.

2. Senthilkumar,
   S/o Mohan ... Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the order dated 22.06.2022 passed in M.C.O.P.No.6 of 2020 on the file of Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellant : Mr.Terry Chella Raja

For Respondents : Mr.G.Vasudevan
for R1

**COMMON JUDGMENT**

(The judgment of the Court was delivered by J.Nisha Banu,J.)

This Civil Miscellaneous Appeal has been preferred by the Insurance Company, challenging the award dated 22.06.2022 passed in M.C.O.P.No.6 of 2020 on the file of Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai. The Cross Objection has been filed by the claimants challenging the said award dated 22.06.2022 seeking enhancement of compensation.

2. For the sake convenience, the appellant in Civil Miscellaneous Appeal is referred to as appellant and the respondents in Civil Miscellaneous Appeal is referred to as respondents in both CMA and Cross Objections.

3. The appellant is the 2nd respondent/Insurance Company in M.C.O.P.No.6 of 2020 on the file of Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai. The 1st respondent is the wife, the 2nd respondent is the daughter, the 3rd respondent is the son, the 4th respondent is the mother and the 5th respondent is the father of the deceased Kannan, who died in a road accident that took place on 01.12.2019.

4. According to the claimants on 01.12.2019 at about 8.00 a.m., while the deceased was driving his own car bearing Registration No.TN-19-P-4006 at OMR Road, Karunkuzhipallam near Vakkoil Thottam,

Kancheepuram District, a Innova Car bearing Registration No.PY-01-CB-2425 which came from the opposite direction driven in a rash and negligent manner crossed the center median and dashed against the car of Mr.Kannan/deceased and due to the impact, the rider of the car bearing Registration No.TN-19-P-4006 sustained fatal injuries and died on the spot. Therefore, the 1st respondent/owner of the Innova car and the 2nd respondent/insurer of the Innova car, both are liable to pay the compensation to the claimants. They have claimed a sum of Rs.45,00,000/- as compensation.

5. The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and the age, occupation, date and time of accident, dependency of the deceased and income of the deceased are all denied by the Insurance Company. The Insurance Company has also denied the manner of accident. Whether the driver of the Innova car was at fault or whether the deceased was at fault is not known and as such, the deceased would be guilty of contributory negligence. It is further stated in the counter statement that the claim petition contains plain and wild allegations and the same is devoid of

merits. Hence, the claim petition is liable to be dismissed.

6. Before the Tribunal, the 1st claimant examined herself as PW1. Mr.Radhakrishnan, an eye witness to the accident was examined as PW.2 and one M.Shanmugavel was examined as PW3. Exs.P1 to P20 were marked on the side of the claimants. No witness was examined and no document was marked on the side of the Insurance Company. The 1st respondent therein, owner of Innova car, remained absent and was set exparte before the Tribunal.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the Innova car and directed the 1st respondent/owner of the innova car and the 2nd respondent/ /insurer of the said vehicle, to pay jointly and severally a sum of Rs.23,83,750/- as compensation to the claimants.

8. Against the said award dated 22.06.2022 made in M.C.O.P.No.6 of 2020, granting compensation to the respondents/claimants, the

appellant/Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant/Insurance Company would contend that the Tribunal failed to note the involvement of collision of two vehicles in the middle of the road and hence, the mere registration of FIR against the insured driver is not conclusively established that the negligence is on the part of the insured driver and consequently, contributory negligence will have to be fixed on the driver of the car bearing registration No.TN-19-P-4006. He would further state the award of Rs.1,20,000/- towards of loss of consortium is on the higher side.

10. Learned counsel for the appellant mainly contended that the Tribunal was wrong in fixing the notional income of the deceased as Rs.15,000/- and adding 25% towards future prospects, when there is no documentary evidence. He would further state that in any event, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

11. Heard the learned counsel appearing for the appellant/ Insurance Company, learned counsel for the respondents 1 to 5 and perused the entire materials available on record.

12. It is stated in the claim petition that the accident has occurred due to rash and negligent driving by the driver of the innova car bearing Reg.No..PY-01-CB-2425 insured with the appellant. Ex.P1-First Information Report would prove that the case has been registered against the driver of the innova car bearing Reg.No..PY-01-CB-2425. P.W.2 had clearly stated the manner of the accident and his evidence is not disproved by any other evidence. The appellant/Insurance Company has not examined any witness. The Tribunal, considering the evidence of PW2 and Ex.P1/F.I.R., held that the accident has occurred only due to rash and negligent driving by the driver of the innova car bearing Reg.No..PY-01-CB-2425. We find no error in the said finding of the Tribunal.

13. As far as loss of income concerned, the deceased is aged 42 years at the time of accident and that he was doing real estate business.

PW3 had deposed that he is doing real estate business and construction work and his business is a registered one and he has got branches at Thiruvanmiyur and Adyar and that the deceased was doing real estate business along with him and the deceased sold number of properties for his company and he was earning Rs.50,000/- to Rs.1,00,000/- per month. Though PW3 had stated so, the Tribunal has fixed only Rs.15,000/- as notional income of the deceased and has rightly added 25% towards future prospects as per the decision in ***National Insurance Company Limited v. Pranay Sethi and others*** reported in ***2017(2) TANMAC 609 (S.C.),*** which in our opinion is just and proper. That apart, the compensation fixed under the other heads, loss of estate, loss of consortium and funeral expenses are reasonable and it does not require interference of this Court. We find no infirmity or illegality in the award passed by the Tribunal and hence, the same has to be confirmed. Accordingly, the Civil Miscellaneous Appeal is dismissed.

14. In view of the dismissal of the Civil Miscellaneous Appeal and taking into consideration, the findings rendered therein, the Cross Objection is also dismissed.

15. The appellant insurance company is directed to deposit the entire compensation awarded by the Tribunal, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. The other directions issued by the Tribunal and the mode of payment of compensation remains unaltered. No costs. Consequently, connected miscellaneous petition is closed.

**(J.N.B, J.) (R.S.V., J.)**
**10.01.2025**

vsi

To
The Chief Judge,
The Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.

**J. NISHA BANU, J.**
and
**R. SAKTHIVEL, J.**

vsi

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