

C.M.A(MD)No.28 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 10.06.2025

Pronounced On : 25.08.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.28 of 2023

and

C.M.P(MD)No.327 of 2023

The Branch Manager,
Reliance General Insurance Company Limited,
43 B, Sri Abirami Tower,
2nd Floor, Kavuli Brown Road,
RS Puram, Coimbatore – 641 002.

: Appellant

Vs.

1.Periyanayaki

2.Pasupathi

3.The Chairman,
Mount Zion Engineering College,
Engineering & Technology,
Pulivalam, Thirumayam Taluk,
Pudukkottai District – 622 412.

: Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree, dated 06.09.2022 passed in M.C.O.P.No.343 of 2020 on the file of the Motor Accident Claims Tribunal Judge (Principal District Judge) Pudukkottai.



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For Appellant : Mr.V.Sakthivel

For Respondents : Mrs.A.Banumathy, for R1 and R2

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.343 of 2020, dated 06.09.2022 on the file of the Motor Accident Claims Tribunal Judge (Principal District Judge) Pudukkottai.

2.The Appellant/insurer, who was mulcted with liability to pay compensation of Rs.19,44,560/- with interest and costs to the respondents 1 and 2/claimants for the death of Thavasi, consequent to an accident occurred on 29.07.2019, challenging the liability and also the quantum of compensation awarded at by the Tribunal.

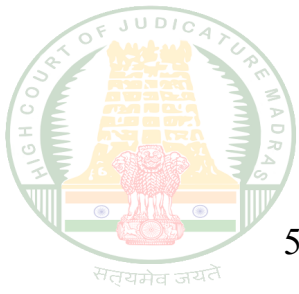
3.Admittedly, the first claimant is the wife and the second claimant is the son of the deceased Thavasi. The case of the claimants is that on 29.07.2019, the deceased was proceeding in his TVS two wheeler bearing Reg.No.TN-55-A-1254 from Ulaginipatti Village to Lenavilakku for his mason job and at about 08.45 am, when he proceeded near the 2nd gate of Mount Zion Engineering College, a bus bearing Reg.No.TN-51-A-1166



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belonging to the said college came in opposite direction and while turning in the 2nd gate in a rash and negligent manner had dashed against the two wheeler and as a result of which, the said Thavasi sustained serious injuries all over his body and he was immediately taken through 108 ambulance to the Pudukkottai Government Medical College Hospital and despite treatment, he succumbed to the injuries on that day itself and that the accident was occurred only due to the rash and negligent driving of the bus driver.

4. The appellant/second respondent insurer's defence is that based on the bus driver's complaint, an FIR was registered against the deceased, Thavasi. According to the insurer, on 29.07.2019 at around 8:45 am, the college bus was proceeding on the left side of the road, having given way to a school bus coming from the opposite direction and at that time, the deceased suddenly and rashly turned his two-wheeler to the right to overtake the bus, colliding with the bus's right front corner despite the bus driver's application of the brakes and stopping of the bus. The insurer contends that the accident occurred solely due to the deceased's rash and negligent driving, with no fault on the part of the bus driver.



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5. During enquiry, the claimants have examined the first claimant as P.W.1 and one Suresh as P.W.2 and exhibited ten documents as Ex.P.1 to Ex.P.10. The first respondent/college remained ex-parte. On the side of the second respondent/insurer two witnesses came to be examined as R.W.1 and R.W.2 and CD file came to be marked as Ex.C.1.

6. The learned trial Judge, upon considering the pleadings and the evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned award, dated 06.09.2022 holding that the first respondent's bus driver was responsible for the accident, directed the respondents 1 and 2 to pay compensation of Rs.19,44,560/- with interest at 7.25% per annum jointly and severally from the date of petition till the date of realization. Aggrieved by the impugned award, the insurer has preferred the present appeal.

7. The learned counsel for the appellant would submit that the FIR was registered solely against the deceased Thavasi, with no case filed against the bus driver. The counsel would contend that the Tribunal overlooked the final report filed against the deceased and failed to properly consider the rough sketch of the accident site, which allegedly indicates that the deceased was



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entirely responsible for the accident. Additionally, the counsel would point out that the deceased lacked a valid driving licence to ride the two-wheeler at the time of the accident and was not wearing a protective helmet, contributing to the head injuries that led to his death. The counsel would further submit that the Tribunal erred in not attributing contributory negligence to the deceased for driving without a licence and not wearing a helmet.

8. The claimants in order to prove the mode of accident have examined P.W.2 alleged to be the occurrence witness. P.W.2 would depose about the manner of accident in tune with the case of the claimants. No doubt, on the basis of the complaint given by the bus driver, FIR came to be registered against the deceased Thavasi and that since he died due to the accident, final report came to be filed as abated.

9. It is settled law that the charge sheet filed by the police or the finding given by the criminal Court with regard to the mode of accident is not binding on the Tribunal and the Tribunal is duty bound to decide the cause of the accident and the person responsible for the accident from the evidence adduced before it.



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WEB COPY 10. As rightly contended by the learned counsel for the claimants, in the present case, though the insurer has taken a specific stand that the bus driver was not at all fault and the deceased alone was responsible for the accused, they have not chosen to examine the bus driver, nor any other person, who allegedly witnessed the accident.

11. As rightly contended by the learned counsel for the claimants, there is absolutely no contra evidence with regard to the mode of accident and the negligence. Considering the evidence available on record, the learned trial Judge has come to a right decision that the accident was occurred only due to the rash and negligent driving of the bus driver.

12. The learned counsel for the appellant/insurer would mainly contend that the deceased was not having valid driving licence at the time of accident and that he was not wearing protective head gear. The claimants have not disputed the above said aspects.

13. When the above matter was taken up for final hearing, the learned counsel for the claimants would fairly concede that the deceased was not



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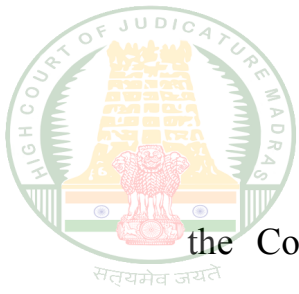
having license and was not wearing helmet at the time of accident and that

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14. Considering the evidence and taking note of the fact that the deceased was not having valid driving license and also not wearing helmet, this Court is of the view that 15% of compensation has to be deducted towards contributory negligence on the part of the deceased.

15. Now turning to the quantum of compensation, the learned counsel for the appellant would submit that the Tribunal without any basis has fixed the monthly income of the deceased at Rs.14,110/- and awarded Rs.18,34,560/- for loss of dependency, which is excessive.

16. No doubt, as rightly pointed out by the learned counsel for the insurer, the claimants have not produced any iota of evidence that the deceased was working as mason at that time and was earning Rs.24,000/- per month. In the absence of any evidence, the Tribunal has rightly applied the decision of Division Bench in the case of *Andal and others Vs. Avinav Kannan and another* reported in *2019(1) TNMAC 54*, and taking note of



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the Cost of Inflation index, has rightly fixed the monthly income at Rs.14,110/-. The tribunal taking note of the post-mortem certificate has fixed the age of the deceased at 47 years and the same was not disputed by the other side.

17. The Tribunal considering the age of the deceased and taking note of the judgment of Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in **2017 2 TNMAC 609**, has added 25% of the income towards future prospects and as per the dictum laid down by the Hon'ble Supreme Court in **Sarla Verma and others vs Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**, has rightly deducted 1/3 of income for personal and living expenses of the deceased.

18. The Tribunal by relying on the dictum laid down in **Sarla Verma's** case has rightly applied the multiplier '13' and arrived at the loss of dependency at Rs.18,34,560/-. The Tribunal by relying on the judgment of Hon'ble Supreme Court in **Magma General Insurance Company Ltd Vs. nanu Ram Alias Chuhur Ram** reported in **2018 ACJ 2782**, has rightly awarded Rs.40,000/- for the first claimant towards loss of spousal

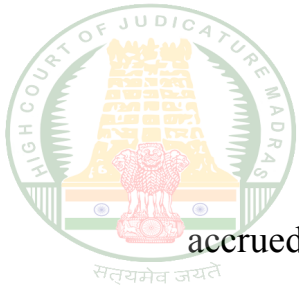


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consortium and Rs.40,000/- to the second claimant towards loss of parental consortium. The Tribunal as per the judgment of ***Pranay Sethi's*** case has rightly awarded Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate.

19. Considering the above, total compensation awarded at Rs.19,44,560 cannot be found fault with. Since this Court has decided to deduct 15% of the compensation towards contributory negligence, the claimants are entitled to get Rs.16,52,876/- (Rs.19,44,560/- - (15/100)). The compensation awarded is reduced from **Rs.19,44,560/- to Rs.16,52,876/-**. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs .

20. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation amount is reduced from **Rs.19,44,560/- to Rs.16,52,876/- (rounded to Rs.16,52,900/-)** with interest at 7.5% per annum, excluding the default period, if any. The second appellant/Insurer is directed to deposit the award amount, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the claimants are permitted to withdraw the award amount with



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accrued interest and costs, less the amount already withdrawn, if any, on due application before the Tribunal. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

25.08.2025

NCC : Yes/No

Index : Yes/No

Internet: Yes/No

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To

1.The Motor Accident Claims Tribunal Judge
(Principal District Judge) Pudukkottai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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