BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.06.2025

Delivered on : 26.08.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.222 of 2022
and
C.M.P.(MD)No.1972 of 2022

The Manager,
HDFC ERGO General Insurance Company Ltd.,
No.248, B-1-C & C4, First Floor,
Rekha Towers, Kamarajar Salai,
Madurai – 7. : Appellant /2nd Respondent

Vs.

1.A.Selvaraj

2.S.Rajalakshmi : Respondents 1 & 2 /Petitioners

3.R.Subramanian : 3rd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in M.C.O.P. No.816 of 2018, dated 22.10.2021, on the file of Motor Accidents Claims Tribunal (Special District Judge) Madurai.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.V.R.G.Mohan, for R1 & R2.

: Mr.N.Tamilmani, for R3.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.816 of 2018, dated 22.10.2021, on the file of Motor Accidents Claims Tribunal (Special District Judge) Madurai.

2.The appellant/insurer, who was mulcted with liability to pay compensation of Rs.22,70,000/- with interest at 7.5% per annum to the respondents 1 and 2/claimants, for the death of one Raghul, consequent to an accident occurred on 08.04.2018, challenged the entire liability fastened on it and also the quantum of compensation awarded at by the Tribunal.

3.For sake of convenience and brevity, the parties will herein-after be referred as per their status/ranking before the trial Court.

4. The case of the claimants is that on 08.04.2018 at about 13.00 hours, the deceased and his friend while returning from Kodaikanal, in Kodaikanal – Badlagundu road, in a two wheeler Yamaha R15 bearing Registration No.TN-59-BL-4323, in a moderate speed, one swift car bearing Registration No.TN-59-AK-1715, which was proceeding towards Kodaikanal came in a rash and negligent manner and dashed against the two wheeler and as a result of which, the said Raghul sustained multiple injuries and died on the spot itself and that the accident was occurred only due to the rash and negligent driving of the swift car driver.

5. It is the further case of the claimants that their deceased son was hale and healthy and was aged 22 years at the time of accident; that the deceased had already completed Diploma in civil engineering and was earning a sum of Rs.25,000/- per month and that the claimants being the parents are entitled to get compensation.

6.The defence of the second respondent/insurer is that the Swift car, proceeding uphill on a ghat road, was being driven by the first respondent at a slow speed. Meanwhile, the deceased, riding a motorcycle without wearing a helmet, came from the opposite direction at a high and uncontrollable speed. Upon seeing the car, the deceased applied the brakes, causing the motorcycle to skid and veer onto the wrong side of the road, where it collided with the car. The insurer contends that the first respondent was not responsible for the accident, which occurred solely due to the rash and negligent riding of the two-wheeler's rider.

7. During enquiry, the claimants examined the first claimant as P.W.1 and one Anandh alleged to be the eye witness of the occurrence as P.W.2 and exhibited 15 documents as Ex.P.1 to Ex.P.15. The first respondent/owner of the vehicle had remained ex-parte. The second respondent/insurer adduced neither oral nor documentary evidence.

8. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has

passed the impugned award, dated 22.10.2021 by holding that the driver of the first respondent's vehicle was responsible for the accident, directed the second respondent/insurer to pay compensation of Rs.21,70,000/- with interest and cost. Aggrieved by the impugned award, the insurer has preferred the present appeal.

9. The learned counsel for the appellant would submit that since the deceased was riding his two-wheeler downhill from Kodaikanal Hills towards Batlagundu, while the first respondent's car was traveling uphill towards Kodaikanal, the deceased was obligated to yield to the vehicle coming uphill. Given the uphill vehicle's limited ability to drive at speed, the learned counsel would contend that the deceased's actions contributed to the accident, making it evident that the deceased's negligence played a role in the collision.

10. As rightly pointed out by the learned counsel for the respondent, the appellant has not raised any ground touching the liability fastened on it by the Tribunal. Even assuming for argument sake, such a ground was raised, as rightly contended by the learned counsel for the

respondent, the insurer has not adduced any evidence in support of their defence. The second respondent has not chosen to examine the driver of the car or any other witnesses, who allegedly witnessed the accident.

11. No doubt, though the appellant has taken a stand that the deceased had driven the motorcycle without wearing the helmet at the time of accident, P.W.2, who was travelling as a pillion rider in the motorcycle ridden by the deceased, in his cross examination would categorically admit that both were wearing protective head gear at the time of accident.

12. Though the learned counsel for the appellant would submit that the deceased was not possessing valid driving license at the time of accident, the same was not pleaded in the counter statement and there is absolutely no evidence in that regard. Considering the above, this Court is in entire agreement with the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the car driver.

13. Regarding the compensation quantum, the learned counsel for the appellant would submit that the deceased's father (P.W.1) admitted in his testimony that the deceased didn't complete his Diploma in Civil Engineering, having discontinued in the second year. Despite the claimants' failure to provide evidence on the deceased's occupation and income, the Tribunal arbitrarily fixed the monthly income at Rs. 20,000/- and awarded Rs.22,70,000/- as compensation. The learned counsel would contend that this amount is excessive and exorbitant, warranting modification.

14. No doubt, the claimants produced the transfer certificate (Ex.P.5) issued by Ladha Mathavan Polytechnic College, indicating that the deceased, Raghul, was in the final year of his Diploma in Civil Engineering in 2015, having been admitted to the college on 22.06.2012. However, as aptly pointed out by the learned counsel for the appellant, the transfer certificate does not mention that the deceased successfully completed the diploma course.

15.Notably, P.W.1, the deceased's father, would admit during cross-examination that his son hadn't successfully completed the diploma course and was unaware if his son had passed the semester examinations. He had not produced mark sheets to evidence his son's passing of these exams. Furthermore, while the claimants stated in the claim petition that their son earned Rs. 25,000/- per month after completing his diploma in civil engineering, they failed to specify their son's job or work at the time of the accident.

16. Moreover, they have not produced any iota of evidence to prove the income of the deceased. But the Tribunal without any basis by observing that the deceased was a civil engineer, has fixed the notional income at Rs.20,000/- per month. As already pointed out, the deceased has not even completed the diploma course. The Tribunal taking note of the postmortem certificate and the death certificate, has rightly fixed the age of the deceased as 22 years and the same has not been disputed by the appellant/insurer. Considering the age of the deceased and also taking note of the discontinuation of the diploma course, this Court notionally fixes the monthly income at Rs.12,000/-.

17. As rightly pointed out by the learned counsel for the claimants, the Tribunal did not award any amount for future prospects. Considering the age of the deceased and on applying the decision of the Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700 ,** 40% of the income should be added towards future prospects, making it Rs.16,800/-. Since the deceased was a bachelor, 50% of the income should be deducted for personal and living expenses of the deceased, resulting in Rs.8,400/-.

18. As per decision of Hon'ble Supreme Court in **Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104.,** the Tribunal has rightly applied the multiplier '18'. Hence, the loss of dependency comes to **Rs.18,14,400/-.** (Rs.8,400 x 12x18).

19. The Tribunal has rightly awarded **Rs.40,000/- each** for the claimants, who are the parents of the deceased towards filial consortium. The Tribunal has awarded Rs.15,000/- for funeral expenses and

Rs.15,000/- for transportation. The claimants are entitled to get **Rs.15,000/-** for funeral expenses and **Rs.15,000/-** for loss of estate under the conventional heads. Hence, the claimants are entitled to get total compensation at **Rs.19,24,400/-**

20. At the time of admission, this Court directed the Registry to seek remarks from the concerned Judicial Officer regarding the submission made by the learned counsel for the appellant that the Tribunal initially uploaded one award and later replaced it with another. The Judicial Officer submitted remarks attributing the discrepancy to mistakes by her Steno-typist in noting the monthly income and deductions and after discovering the errors, both sides' counsels were informed, and a corrected award was uploaded.

21. Notably, the initial award was uploaded only after the concerned Judge's approval and signature, and pronouncement in open Court. It is not their case that the award was uploaded without the Presiding Officer's signature or approval. However, the High Court has consistently cautioned against replacing initial orders with new ones,

citing mistakes or clerical errors. Judicial Officers must exercise diligence in uploading orders and verify them thoroughly before pronouncement and uploading. Given the remarks were received in 2022, this Court is not inclined to pursue the matter further.

22. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the tribunal is reduced from **Rs.22,70,000/-** to **Rs.19,24,400/-** . The Appellant/Insurer is directed to deposit the modified amount with interest at 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit, the claimants are permitted to withdraw the award amount with accrued interest and costs as apportioned by the Tribunal, less amount already withdrawn, if any, on due application before the Tribunal. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

26.08.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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K.MURALI SHANKAR,J.

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To

1.The Motor Accidents Claims Tribunal
(Special District Judge) Madurai.

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

Pre-delivery order made in
C.M.A(MD)No.222 of 2022
and
C.M.P.(MD)No.1972 of 2022

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