



C.M.A.(MD)No.1404 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.1404 of 2024

1. Vidhyananth Sharma

2. Shanti Devi

3. Minor Poonamkumari

4. Minor Bijaykumar

5. Minor Ranjankumari

6. Minor Kasalkumari

... Appellants

VS.

1. M. Premkumar

2. The New India Assurance Company Limited,
Dharmapuri Branch 721 801,
Zonal Office, Kamarajarsalai, Madurai,
Through its Zonal Manager

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1973, against judgment and decree dated 19.07.2018 passed in M.C.O.P.No.510 of 2014 on the file of the Motor Accidents Claims Tribunal / Special District Court, Madurai and to allow this C.M.A. by directing the second respondent before the tribunal to compensate the petitioners.



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For appellant : Mr.B.A.Muruganantham
For Respondents
For R1 : No appearance
For R2 : Ms.A.Ilango

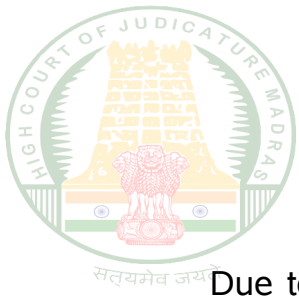
J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the legal heirs of the deceased Ajay Kumar against the award dated 19.07.2018 passed in M.C.O.P.No.510 of 2014 by the Motor Accident Claims Tribunal / Special District Court, Madurai.

2. Despite the receipt of the notice, the first respondent neither appeared nor entered appearance through counsel.

3. Heard the arguments of the learned counsel for the appellant and learned counsel for the second respondent. Perused the relevant records.

4. The case of the claimants is that, on 11.12.2013 at about 11.00 a.m., while the deceased was riding his two wheeler (TN-58-H-9858) with pillion Hari Kishore Mehta by proceeding from south to north along Thirumangalam – Kappalour road and turned to the western side. While so, the driver of the lorry (TN-29-AK-5600) came in a rash and negligent manner towards his right side (southern side) and hit on the above said two wheeler.



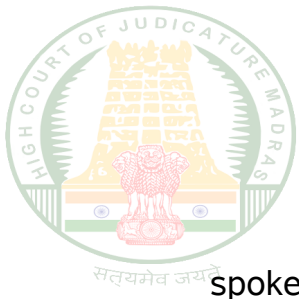
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Due to the said impact, the rider of the two wheeler Ajay Kumar sustained serious injuries and succumbed to his injuries on the spot. As the accident occurred due to the rash and negligent driving of the driver of the above stated lorry, the owner and insurer of the said lorry namely the first respondent and second respondent are liable to pay compensation to the claimants herein.

5. Upon consideration, the Tribunal concluded that it is because of the rash and negligent driving of the driver of the first respondent's lorry, the accident occurred. It was also held that as the deceased was not in possession of driving licence and as he was not wearing helmet at the relevant point of time, he has also contributed to the accident. For his negligence, 40% was fixed and to the extent of 60%, the owner of the erred vehicle and his insurer were liable to pay compensation. Against this finding, this appeal has been preferred.

6. At trial, on the petitioner side, three witnesses were examined and three documents were marked. On the respondents side, two witnesses were examined and two documents were marked. Ex.X1 to X5 were marked through both side witnesses. Among the claimants witnesses, P.W.1 – pillion rider of the two wheeler (TN-58-H-9858) who is an ocular witness and has



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spoken about the accident.

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7. It is the evidence of P.W.1 that on 11.12.2013 at about 11.00 a.m., while he was riding as a pillion on a motor cycle TN-58-H-9858 and it was ridden by Ajay Kumar. While the rider of the two wheeler was proceeding from south to north along Thirumangalam - Kappalour road and turned to the left side of the road, a lorry proceeding from west to eastern direction came in a rash and negligence manner towards the right side of the road (southern side) and hit upon the two wheeler. Due to the said impact, the rider Ajay Kumar sustained serious injuries and succumbed to the same. During his cross examination, it is the evidence of P.W.1 that the two wheeler hit upon the right side front portion of the lorry. The motor vehicle inspector report pertaining the lorry confirms the act that the right side front wheel leg guard was slightly bent. The details of the damages regarding the two wheeler are given hereunder:

- i. front wheel rim pressed and bend / also wheel dislocated.
- ii. Fork slightly bend and damaged.
- iii. Head light and speedometer damaged
- iv. left side rider foot rest bend.
- v. Leg guard right side slightly bend.

8. From a thorough perusal of the evidence of P.W.1 coupled with



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Ex.R1-Rough Sketch, Ex.R4 and R5 (MV report of lorry and two wheeler), the rider of the two wheeler turned the vehicle to western side with higher speed. At the same time, the lorry proceeding from west to eastern side turned to the right side and both of them, the rider of the two wheeler and the driver of the lorry have contributed to the accident.

9. It has been averred by the second respondent / insurance company that the rider of the two wheeler did not wear the helmet and he was not in possession of driving licence. There is no whisper about the non-wearing of helmet by the claimant in the counter. As regards the driving licence of the rider, R.W.1 - Staff of the Road Transport Office, Thirumangalam has spoken about the same and she has also referred to Ex.R5 - MV Report pertaining the two wheeler and it has been mentioned that the rider of the two wheeler Ajay Kumar did not possess driving licence. Had the driver of the lorry slowly driven the vehicle, the accident could have been averted. In consideration of the above said oral and documentary evidence, contributory negligence on the part of the deceased rider of the two wheeler is fixed as 25% and whereas upon the driver of the lorry is fixed as 75%.

10. As held in National Insurance Co. Ltd., v. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), the claimants No.1 and 2 are entitle

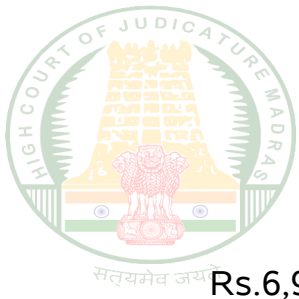


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for loss of consortium of Rs.40,000/- each and an amount of Rs.80,000/- is granted under this head. As regards the loss of estate, an amount of Rs. 15,000/- is granted. As regards the other heads, the amounts granted by the Tribunal appears to be reasonable and acceptable, and it needs no interference. The compensation awarded as mentioned supra is reworked and tabulated as given hereunder:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For Loss of Dependency	Rs.11,34,000/-	Rs.11,34,000/-	Confirmed
2	For Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
3	For Transport Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
4	For loss of consortium (Rs.40,000/- each)	-	Rs.80,000/-	Granted
5	For loss of Estate	-	Rs.15,000/-	Granted
	Total	Rs.11,64,000/-	Rs.12,59,000/-	Enhanced
	Contributory Negligence	(Less 40 %) Rs.11,64,000/- -Rs.4,65,600 =Rs.6,98,400/-	(Less 25%) Rs.12,59,000/- - Rs.3,14,750/- =Rs.9,44,250/- Rounded off as Rs.9,44,000/-	

11. Thus, the compensation awarded by the Tribunal is enhanced from



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Rs.6,98,400/- to Rs.9,44,000/- which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

12. In the result,

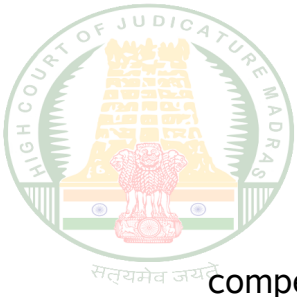
(i) The Civil Miscellaneous Appeal stands partly allowed. There is no order as to costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.6,98,400/- to Rs.9,44,000/-.

(iii) The Insurance Company / second respondent is directed to deposit the enhanced compensation amount now determined by this Court i.e., Rs.9,44,000/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs to the credit of M.C.O.P.No.510 of 2014 on the file of Motor Accidents Claims Tribunal / Special District Court, Madurai within a period of six weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the claimants no.1 and 2 are permitted to withdraw the amount now determined by this Court, as apportioned by the Tribunal, along with the interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal.

(v) The claimants are directed to pay the Court fee for the enhanced



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compensation amount, if required.

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(vi) The Tribunal below shall disburse the amount upon production of the certified copy showing proof of payment of Court fee by the claimants. Consequently, connected Civil Miscellaneous Petition, if any stands closed

30.01.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Special District Court, Madurai
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI,J.,

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