



C.M.A(MD)No.766 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 04.04.2025

Delivered on : .04.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

C.M.A(MD)No.766 of 2023

and

C.M.P(MD)No.10761 of 2023

1.The Manager,
Reliance General Insurance Co., Ltd.,
Reliance Centre, South Wing,
4th Floor, Off Western Express Highway,
Santa Cruz East, Mumbai,
Maharashtra-400 055.

2.The Branch Manager,
Reliance General Insurance Co., Ltd.,
No.10/4/4, Thaha Plaza, 2nd Floor,
South Bye Pass Road,
Vanarapettai,
Tirunelveli.

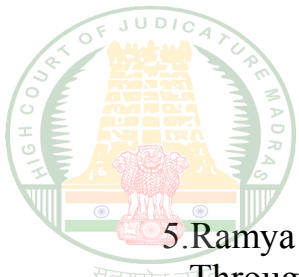
... Appellants/2nd &3rd Respondents

-Vs-

1.S.Hemaa
2.Minor R.S.Vijitha
3.Minor A.S.Kannan
(Minor respondents 2 & 3 rep.
through their next friend and
guardian their mother, 1st respondent)
4.R.Rajammal

...Respondents1-4/ Petitioners 1-4

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5.Ramya Marketting
Through its Managing Director,
Sethuraman.

...5th Respondent/1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.01.2023 made in MCOP No.782 of 2022 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Tirunelveli.

For Appellant	: Mr.K.R.Shivasankari
For R1 & R4	: Mr.A.Selvaraj
For R2 &R3	: Minor rep. by R1
For R5	: No appearance

JUDGMENT

DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

The widow and the two minor children of the deceased R.Suresh Kumar along with his mother preferred claim petition seeking compensation of Rs.2,25,00,000/- for the accidental death of the said R.Suresh Kumar due to the negligence of the rider of the two wheeler insured under the appellant.

2.The Tribunal awarded Rs.1,21,41,588/-(rounded off to Rs.1,21,41,600/-) with 7.5% interest as compensation and costs of Rs.2,50,714/-.The award passed

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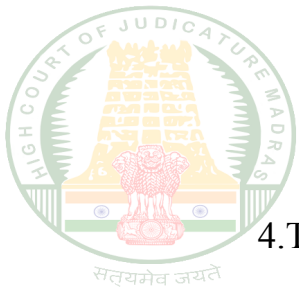


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in M.C.O.P.No.782 of 2022 by the Motor Accident Claims Tribunal/Principal District Judge, Tirunelveli, on 25.01.2023, is under challenge in this appeal.

3.The facts relevant for the point for determination:

The deceased R.Suresh Kumar, who was aged about 49 years, married to the first claimant and blessed with two minor children, his mother aged about 77 years was also dependent on him. The deceased was a Teacher in the Department of School Education earning monthly salary of Rs.88,240/- plus dearness allowances. On 21.12.2021 while riding his uninsured two wheeler bearing Registration No.TN-67-AC-1071, he was hit by a two wheeler rider near Manthoppu Junction, Madurai – Tuticorin NH Road. The offending wo wheeler bearing Registration No.TN-64-S-2750 validly insured under the appellant Insurance Company. The accident had occurred while the deceased and the offending vehicle moving in the same directions. The claimants alleged that the vehicle coming behind the deceased came rashly and negligently in a high speed and dashed against the vehicle moving ahead. Whereas the case of the Insurance Company/appellant is that the deceased without making any indication tried to turn the right side of the road and dashed against the vehicle bearing Registration No.TN64-S-2750.



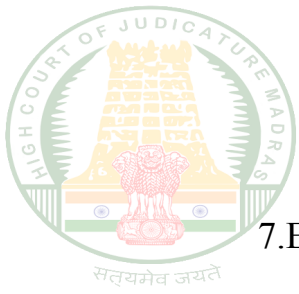
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4.The Tribunal, on appreciation of the evidence, held that the case for causing death by negligence registered against the rider of the two wheeler bearing Registration No.TB-64-S-2750. P.W.2, the witness to the accident has also attributed the negligence on the part of the rider who had driven the two wheeler insured under the appellants.

5.The contention is that the deceased also contributed for the accident by his omission to wear helmet rejected by the Tribunal since there is evidence to believe that the deceased not wearing helmet.

6.After analysing the evidence let in by the claimants through P.W1 to P.W3, Ex.P.1 to Ex.P.25, the Tribunal awarded the compensation as below:

1.	Loss of Income	Rs.1,20,41,588/-
2.	Loss of Consortium for 1 st Petitioner	Rs.40,000/-
3.	Funeral Expenses	Rs.15,000/-
4.	Transport Expenses	Rs.15,000/-
5.	Loss of love and affection to the petitioners 2 to 4 each 10,000/-	Rs.30,000/-
	Total	Rs.1,21,41,588/-

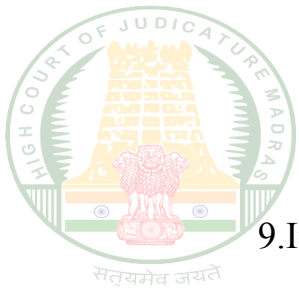


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7.Ex.P.25-Copy of Salary Certificate of the deceased shows the gross monthly income of the deceased at Rs.88,640/-, 30% future prospects added as per the judgment of the Hon'ble Supreme Court in **National Insurance Company Vs Pranay Sethi and others**, reported in **2017(2)TNMAC 609(SC)**. After deducting $1/4^{\text{th}}$ for the personal expenses, the loss of income fixed applying multiplier 13 and deduction TDS.

8.In the grounds of appeal, the Insurance Company contended that the Tribunal failed to take note of the fact that the deceased and the rider of the vehicle insured under it were moving towards the same direction. The deceased negligently turned the vehicle to the right side without noticing the vehicle coming behind him. He was not wearing helmet. Not injured his vehicle, recklessly he turned his vehicle bearing Registration No.TN-67-AC-1071 to the right side without giving signal/indicator. Therefore, for contributory negligence, $1/3^{\text{rd}}$ of the award has to be deducted. The deceased was a Government Employee and his age and salary are borne by records and therefore, no dispute over it. The vehicle he was driving not injured, but that will not disentitle him from claiming compensation from the insurer of the offending vehicle. The dependency of the claimants as wife, children and father also proved through the LR certificate-Ex.P. 4 and Aadhar cards-Ex.P.12 to Ex.P.15.

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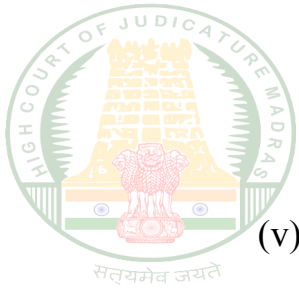
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9.Insofar as the alleged negligence, the FIR in Cr.No.153 of 2021 attributes the rash and negligent driving of the two wheeler rider as the cause for death of R.Suresh Kumar. P.W2's evidence clearly shows that the vehicle was hit by the vehicle coming behind him rash and negligent manner. To prove anything contrary not evidence placed.

10.Hence, the award of the Tribunal both in quantum as well as the negligence needs no interference. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

11.The appellants/Insurance Company are directed to deposit the award amount, less the amount already deposited if any, with accrued interest and costs to the credit of M.C.O.P.No.782 of 2022 on the file of Motor Accidents Claims Tribunal /Principal District Judge, Tirunelveli, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the respondents 1 and 4/claimants are permitted to withdraw their shares along with interest and costs as apportioned by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal.



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(v)As the appellants 2 and 3/claimants are minors, the Tribunal shall

deposit the shares of the minor claimants in a Fixed Deposit in any one of the Nationalized Banks, till the minor claimants attain majority. The guardian of the minor claimants is permitted to withdraw the interest accrued thereon once in three months directly from the bank.

[G.J., J.] & [R.P., J.]

.04.2025

NCC : Yes / No

Index : Yes / No

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To
The Motor Accident Claims Tribunal,
Principal District Judge,
Tirunelveli.

Copy to:
The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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Predelivery Judgment made in
C.M.A(MD)No.766 of 2023
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