

C.M.A(MD)No.1236 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.03.2025**

CORAM

THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A(MD)No.1236 of 2024
and
Cros.Obj(MD)No.50 of 2024
and
C.M.P(MD)No.12974 of 2024

C.M.A(MD)No.1236 of 2024:

M/s The National Insurance Company Limited,
Represented through its Branch Manager,
2A, 3rd Floor, Thirumukkulam North Street,
Thallakulam, Madurai-2.

... Appellant/2nd Respondent

Vs.

1.Boomi

2.Karpagavalli

3.Alagujothi

4.Manimegalai

5.Sabarimala

6.Manju

... Respondents/Petitioners

7.C.M.Prasathraja

... Respondent/1st Respondent



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Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the award, dated 19th February, 2024 passed in M.C.O.P.No.806 of 2022 on the file of the Motor Accident Claims Tribunal/Special District Judge (MACT), Madurai.

For Appellant : Mr.V.Sakthivel

For R1 – R6 : Mr.R.Gowri Shankar

Cros.Obj(MD)No.50 of 2024:

1.Boomi

2.Karpagavalli

3.Alagujothi

4.Manimegalai

5.Sabarimala

6.Manju ... Appellants/Respondents 1-6

Vs.

1.M/s The National Insurance Company Limited,
Represented through its Branch Manager,
2A, 3rd Floor, Thirumukkulam North Street,
Thallakulam, Madurai-2. ... Respondent/Appellant

2.C.M.Prasathraja ... Respondent/7th Respondent

Prayer: Cross Objection is filed under Order 41 Rule 22 of Code of Civil Procedure, to set aside the order passed in M.C.O.P.No.806 of 2022, dated 19.02.2024 on the file of the Motor Accident Claims



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Tribunal/Special District Court to deal with Motor Accident Cases, Special District Judge (MACT), Madurai in so far as fixing 50% of contributory negligent on the deceased and thereby awarded only 50% of fixed compensation.

For Appellants : Mr.R.Gorwi Shankar

For R1 : Mr.V.Sakthivel

JUDGMENT

Challenging the award passed in M.C.O.P.No.806 of 2022, dated 19.02.2024 on the file of the Motor Accident Claims Tribunal/Special District Judge (MACT), Madurai, this civil miscellaneous appeal has been filed by the Insurance Company.

2. For the sake of convenience, the parties herein are referred to as per the ranking before the learned Tribunal.

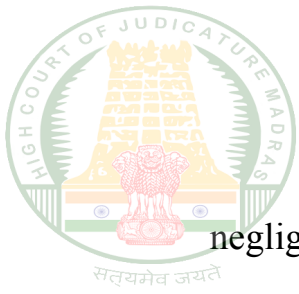
3. The appellant Insurance Company is the 2nd respondent before the Tribunal. The petitioners are the legal heirs of the deceased person. The 1st respondent is the owner cum driver of the four wheeler involved in the accident. On 18.02.2022, after purchasing groceries, the deceased riding his TVS XL bearing registration no.TN67F7130 intending to cross



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the Virudhunagar to Thirumangalam NH7. While crossing the road from west to east, Hundai i10 bearing registration no.TN09BP6518 which was driven in a fast and negligent manner by the 1st respondent from south to north, hit against the rider of the two wheeler causing an accident. As a result of which, the rider of the two wheeler, namely Muthuramalingam sustained serious injuries, who on admission at Thirumangalam Government Hospital was declared dead on the date. The 1st respondent had insured his four wheeler with the 2nd respondent Insurance Company. At the time of accident, the deceased was aged about 59. Seeking to compensate the death of Muthuramalingam, his legal heirs had laid M.C.O.P.No.806 of 2022.

4. The learned counsel for the Insurance Company submitted that this appeal has been preferred as against the award of the Tribunal on three grounds. (i) The Tribunal ought not to have preferred to fix 50% of contributory negligence on the deceased when he had recklessly and carelessly crossed the road without caution and the learned Tribunal ought to have fixed the entire negligence on the deceased. He submitted that though he possessed a license, the same was with respect to four wheeler and he did not possess license for two wheeler. Hence, the entire

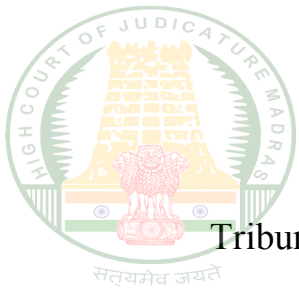


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negligence ought to have fixed on the deceased himself. That apart, he also insisted that the particular Sevarakottai intersection is not an authorized intersection for the deceased to cross the National Highway road and as such, he categorically contended that the entire negligence ought to have been fixed as against the deceased.

(ii) He has submitted that one Shanmugasundaram was examined as P.W.3, who deposed his evidence stating that he had paid the deceased a monthly salary of Rs.28,500/- and the deceased had served as Driver in his Sri Shanmuga Logistics Company. However, no authenticated document was marked through him for proving that an amount of Rs. 28,500/- was credited into the account of the deceased as monthly salary. Only a certificate of salary as certified by P.W.3 himself was marked as Exhibit P.6 which ought not to have been relied upon by the learned Tribunal to fix the monthly income of the deceased. The learned Tribunal ought to have fixed notional income which is probable to the income of a heavy license holder. Having not done so, the quantum of monthly income fixed by the learned Tribunal should also be modified.

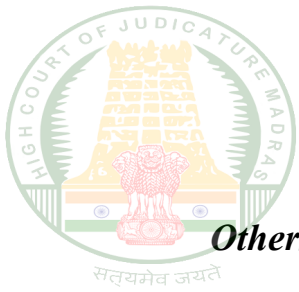
(iii) He insisted that the 1st petitioner is the wife and the 2nd to 6th petitioners are the married daughters of the deceased. Hence, the learned



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Tribunal ought to have deducted 1/3rd towards personal expenditure of the deceased following **Sarla Varma** case, instead the learned Tribunal had proceeded to deduct 1/4th as personal expenses considering the married daughters as his dependents which is not legally sustainable. On that basis, he sought for modification of the award of the learned Tribunal.

5. Per contra, the learned counsel for the petitioners submitted that the claimants have filed a cross objection on the ground that the learned Tribunal ought not to have fixed contributory negligence at all when the eye witness examined as P.W.2 categorically and clearly deposed that the accident had happened only exclusively due to the rash and negligence driving of the 1st respondent. Relying upon the orders passed by this Court in *C.M.A.No.4775 of 2019*, dated 10.01.2025, (*The branch Manager, Reliance General Insurance Co.Ltd., Vs. A.Vijaykumar & Others*), *C.M.A.No.3536 of 2021*, dated 02.01.2025 (*Iffco-Tokio General Insurance Company Ltd., Vs. Rajeshwai & Others*), *C.M.A.No.3340 of 2024*, dated 20.12.2024 (*Sivakami & Others Vs. P.Shanmugam & Others*) and *C.M.A.No.2340 of 2024*, dated 10.01.2025 (*Reliance General Insurance Co.Ltd., Vs. Emayavalli &*



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Others), he submitted that in all those cases, relying upon the evidence of the eye witnesses, this Court had made it clear that contributory negligence should not be fixed on the deceased in the absence of reliable evidence brought in by the Insurance Company. He further submitted that, in all the relied cases, F.I.R was registered as against the driver of the vehicle involved for rash and negligent driving and pressed for modification of the award in such terms.

6. Heard the learned counsel on either side and carefully perused the materials available on record. Since the 7th respondent is owner cum driver, though he remained ex parte and deposed as R.W.1, notice is dispensed with.

7. The learned Tribunal had examined three witnesses on the side of the petitioners as P.W.1 to P.W.3 and had marked Exhibits P.1 to P.12 on the side of the petitioners. On the side of the respondents, two witnesses were examined as R.W.1 and R.W.2 and two documents were marked on the side of the respondents as Exhibits R.1 and R.2. Considering the arguments put forth by the respective parties, evidence deposed and the material available on record, the learned Tribunal had



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fixed 50% of contributory negligence on the deceased. A total award of Rs.28,14,296/- was fixed, of which, 50% contributory negligence having been fixed on the deceased, the claimants are entitled to Rs.14,07,148/- in terms of the aforesaid award.

8. On 18.02.2022, while the deceased Muthuramalingam crossed the Sevarakkottai intersection of Virudhunagar to Thirumangalam NH7, the 1st respondent driving from south to north in the same road in Hundai i10 car, bearing registration no.TN09BP6518 hit against the two wheeler of the deceased, as a result of which, the said Muthuramalingam, was later declared dead at Thirumangalam Government Hospital.

9. A careful perusal of the rough sketch would reveal that the deceased had crossed the intersection, which was claimed by the learned counsel for the Insurance Company as an unauthorized intersection. That apart, the evidence of eye witness, namely Murugadoss who was examined as P.W.2 would reveal that barricade was not made available in the said intersection by the traffic police, which factum would also throw light on the fact that the same was not an authorized intersection. However, the learned counsel for the claimants submitted that such an



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argument made by the learned counsel for the Insurance Company is not sustainable, because the nature of the road in that particular intersection itself has been constructed in such a way with a facility of hump with radials, which argument could not be substantiated from any of the documents available on record.

10. Rules of the Road Regulation, 1989 in Rule 9 mandates that the driver of the motorvehicle shall, on entering road intersection at which traffic is not being regulated, if the road entered is a main road designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his right hand. No doubt, it is the responsibility of whoever crossing the National Highway to be cautious and careful before crossing the National Highway. The four way tracks are designed in such a way as to facilitate the vehicles travelling along the National Highway within the regulated speed which flow of traffic should not be interrupted by any of the vehicles crossing in the intersections. In the instant case, none of the documents marked before the learned Tribunal would reveal the speed with which the four wheeler travelled in the National Highway, except the evidence of P.W.2, who is the eye witness who had deposed that the



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four wheeler was driven in a rash and negligent manner.

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11. With the available evidence, this Court is not able to foresee the speed with which the four wheeler was driven by the 1st respondent. The rough sketch would reveal that the said intersection has been created to cross the National Highway road at that point from SP Natham road to the other service road in western side. As far as the monthly income derived by the learned Tribunal by fixing his income as Rs.28,500/- per month relying upon Exhibit P.6 marked through the employer P.W.3, the learned counsel for the Insurance Company submitted that the same could not be relied upon since no documents were marked before the learned Tribunal which would prove the factum of crediting the monthly salary in the account of the deceased. A careful perusal of Exhibit P.7 i.e., driving license of the deceased would reveal that he possessed a heavy license for driving car, LMV-Tr and transcontainer. I find it necessary to modify the contributory negligence from 50% to 30%. In view of the same in the absence of any evidence to show tha the amount of Rs.28,500/- was credited in the account of the deceased as monthly salary, the learned Tribunal ought not to have proceeded to fix the monthly income as Rs.28,500/- fully on the basis of evidence P.W.3. The

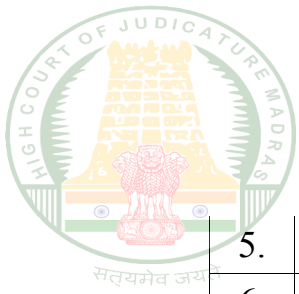


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learned Tribunal ought to have fixed notional income of Rs.20,000/- and should have deducted 1/3rd towards personal expenses on the basis of **Sarala Varma** case and should have made the calculations accordingly. The notional income of the deceased is fixed at Rs.20,000/- and 10% future prospect is included as per the case of **National Insurance Company Limited Vs. Pranay Sethi & Others** reported in **2017 (16) SCC 680**, i.e., Rs.20,000 + Rs.2,000 (future prospects) = Rs.22,000/-. Deducting 1/3rd adopting **Sarala Varma** case from Rs.22,000/-, the notional income would be Rs.14,667/- (i.e., Rs.22,000 – Rs.7,333). Adopting 9 as multiplier, the loss of income would be Rs.15,84,036/- (Rs.14,667 x 12 x 9). Hence, loss of income is modified from Rs. 25,39,296/- to Rs.15,84,036/-. Other heads awarded by the learned Tribunal is hereby confirmed. The total amount of compensation is tabulated as follows:

S. No.	Description	Tribunal	High Court	Award confirmed or enhanced
1.	Loss of income	Rs.25,39,296/-	Rs.15,84,036 /-	Reduced
2.	Loss of spousal consortium	Rs.40,000/-	Rs.40,000/-	Confirmed
3.	Loss of parental consortium	Rs.2,00,,000/-	Rs.2,00,000/-	Confirmed
4.	Funeral expenses	Rs.15,000/-	Rs.15,000/-	Confirmed



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5.	Loss of estate	Rs.15,000/-	Rs.15,000/-	Confirmed
6.	Transport expenses	Rs.5,000/-	Rs.5,000/-	Confirmed
Total compensation awarded		Rs.28,14,296/-	Rs.18,59,036/-	Reduced

11. Since the contributory negligence is fixed 30%, the claimants are entitled to Rs.13,01,326/- (Rs.18,59,036 – Rs.5,57,710).

12. The award is modified to the extent as stated above. Accordingly, the Civil Miscellaneous Appeal and Cross Objection are partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

03.03.2025

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

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To

1.The Motor Accident Claims Tribunal/
Special District Judge (MACT),
Madurai.

12/14



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



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L.VICTORIA GOWRI,J.

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Judgment made in
C.M.A(MD)No.1236 of 2024
and
Cros.Obj(MD)No.50 of 2024

03.03.2025