



C.M.A.(MD).No.1139 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2025

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.(MD).No.1139 of 2018

and

C.M.P.(M.D.)No.11665 of 2018

M/s.United India Insurance Company Limited,
Represented through its Branch Manager,
2/60/1, P.P.K.Building,
Thiruvanandapuram Main Road,
Kanniyakumari,
Kanniyakumari District – 629 165. ... Appellant / 2nd Respondent
vs.

1.R.Susitha
2.Minor R.Harish
3.S.Boomari ... 1st to 3rd Respondents
/ Petitioners

4.G.George Bennet ... 4th Respondent
/ 1st Respondent

(*Minor R2 is represented through
his Mother/Natural Guardian,
the 1st respondent Susitha)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the
Motor Vehicles Act, against the judgment and decree dated 18.07.2018 in
M.C.O.P.No.2259 of 2014 by the on the file of the Motor Accident Claims
Tribunal / District and Sessions Court, (Communal Clash Cases), Madurai.

For Appellant : Mr.J.S.Murali For
Respondents 1 to 3 : Mr.V.Sakthivel For 4th Respondent
: No Appearance

JUDGMENT



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This Civil Miscellaneous Appeal has been preferred against the award dated 18.07.2018 in M.C.O.P.No.2259 of 2014 passed by the Motor Accident Claims Tribunal / District and Sessions Court, (Communal Clash Cases), Madurai.

2. Despite the receipt of notice, 4th respondent neither appeared nor entered appearance through his Counsel.

3. Heard the learned counsel for the appellant and the Respondents 1 to 3 / Claimants.

4. Case as stated in the claim petition is given hereunder:

On 07.09.2014, at about 5.15 p.m., one Shaek Dawood was riding his Yamaha motor cycle bearing Reg.No.TN-58-AE-5659 with pillion Ramesh proceeding at slow speed along Cholavandhan – Madurai road from West to eastern side and while reaching Samayanallur four roads, Thuvariman diversion specifically at Melakkal, a car (Reg.No.TN-75-P-6666) came from north to south at high speed and in a rash and negligent manner hit upon the two wheeler. Due to the said impact, the pillion of the two wheeler Ramesh sustained injuries throughout his body and succumbed to the said injuries at the accident spot itself.



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5. The accident occurred due to the rash and negligent driving of the car driver of the 1st respondent. Therefore, the owner of the car namely the 1st respondent and the its insurer 2nd respondent are jointly and severally liable to pay compensation.

6. Per contra, it was contended by the Insurance Company / 2nd respondent that it is incorrect to state that due to rash and negligent driving of the driver of the car(Reg.No.TN-75-P-6666), the accident happened. The claimants are put to strict proof of age, income and avocation of the deceased.

7. At trial, on the claimant side, three witnesses were examined and 17 documents were marked. On the 2nd respondent side, one witness was examined and two documents were marked.

8. Upon consideration, the Tribunal concluded that it is because of the rash and negligent driving of the driver of the car, accident occurred and fastened the liability in entirety on the owner of the erred vehicle/car and its insurer, 2nd respondent/Insurance Company. As regards quantum, by relying upon the testimony of PW3 coupled with Ex.P5, salary certificate, monthly income of the deceased was fixed as Rs.15,995/- and by applying multiplier 16, after deducting 1/3rd for personal and living



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expenses, loss of dependency was quantified by the Tribunal at Rs. 20,47,680/-.

9. The learned counsel for the appellant would strenuously argue that it is because of the rash and negligent driving of the rider of the two wheeler, the accident occurred and the Tribunal without appreciating the evidence in a proper perspective has fastened the liability on the driver of the car. The rider of the two wheeler has also contributed to the accident and therefore, fastening the liability in entirety on the driver of the car is incorrect. His next argument is that notional income of the deceased was fixed at Rs.15,995/- is incorrect.

10. Whereas the learned counsel for the respondents 1 to 3 / claimants would vehemently contend that as per the evidence of ocular witness, because of the negligent driving of the driver of the car, accident happened and therefore, the Tribunal has fixed the liability in entirety on the rider of the car is correct.

11. He would further contend that as regards the notional income of the deceased, it is his argument that based on the evidence of PW3, one Palanikumar, who was said to be working as Senior Sales Executive in Tractor Spare Parts Shop (Bala Agencies) and by taking multiplier 16, loss



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of dependency was calculated at Rs.20,47,680/- is reasonable compensation and needs no interference.

12. On the claimants' side one Shaek Dawood who is the rider of the two wheeler (Reg.No.TN-58-AE-5659), has been examined as PW2 to speak about the occurrence. It is his evidence that while he was riding his Yamaha motor cycle with pillion Ramesh(deceased) proceeding from west to east from Cholavandhan and near the Thuvariman diversion proceeding towards southern side an Innova Car (Reg.No.TN-75-P-6666) came from northern side and proceeded towards south came in a rash and negligent manner and hit upon the two wheeler from behind. Due to the said impact, the two wheeler got damaged and the pillion Ramesh sustained head injury, besides injuries all over his body and succumbed to the said injuries on the spot. He suffered fracture of left hand and legs and he was admitted at Madurai Apollo Hospital. During the cross-examination of PW2, no details advantageous to the driver of Innova Car was elicited.

13. Per contra, RW1, who is the driver of the car would state that on the date of accident that he was proceeding from north to south along Dindigul – Thirumangalam road, at about 5.15 p.m., motor cycle (Reg.No.TN-58-AE-5659) came from west to east crossed the 4 roads towards eastern side in a rash and negligent manner having taken note of



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the said vehicle, he stopped his vehicle and it is the two wheeler hit on the right side of his vehicle and right side of his vehicle got damaged.

14. Based on the evidence of PW1 and cross-examination of RW1, it is pellucid that when the two wheeler was after a turning from east to southern side and proceeding towards Tirumangalam, the Innova Car came in north – south direction and hit on the two wheeler from behind. Therefore, because of the rash and negligent driving of the driver of Innova Car, the accident happened and the insurer of the said Innova Car namely Appellant/2nd respondent Insurance Company is liable to pay compensation. This Court does not find any perversity or infirmity in the finding of the Tribunal.

15. As the driver of the Innova Car was at total fault, the accident had happened. Therefore, the question of contributory negligence on the part of the rider of the two wheeler will not arise because the claim is made by the legal heirs of the pillion rider. Right or wrong, the issue of contributory negligence can never be raised against the pillion rider or his legal heirs. The arguments put-forth by the learned counsel for the appellant falls on the ground as not sustainable in law.

16. As regards the deceased's income and avocation, it is the



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evidence of PW1 that her husband deceased Ramesh was working as Sales Executive in Automobile spare parts shop and earning a sum of Rs. 15,000/- p.m. His salary certificate is Ex.P5. To substantiate the same, the staff of the said shop has been examined as PW3 (Mr.Palanikumar) and he has deposed about Ex.P5 salary certificate. Based on the same, the Tribunal has fixed the monthly income of the deceased at Rs.15,995/- (Basic = Rs.13,000/-, D.A.=Rs.2,995/-). The Tribunal has taken Basic and D.A., and computed the monthly income which cannot be found fault with. I find no good reason to disturb the finding of the Tribunal.

17. Based on the aforestated discussions and observations, this Civil Miscellaneous Appeal stands dismissed. There is no order as to costs. Connected miscellaneous petition stands closed.

29.01.2025

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The District and Sessions Court,
(Communal Clash Cases),
Madurai.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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R.KALAIMATHI, J.,

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