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CMA No. 1095 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-01-2026

CORAM

**THE HONOURABLE MR JUSTICE N. SATHISH KUMAR
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

CMA No. 1095 of 2022

The Manager
The National Insurance Company Ltd.,
Hero Corp Vertical, DOX, 803-A,
8th Floor, Konnectus, Tower-3,
Opp. New Delhi Railway Station,
Bhav Bhuti Marg, New Delhi 110 002.

Appellant(s)

Vs

1. Murugayal

2.Jothishankar

3.Pradeepa

4.Meiyyappan

5.Ravikumar

Respondent(s)

PRAYER

This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act to set aside the decree and Judgment passed in MCOP No.286 of 2018 on 13-12-2021 on the file of the Learned Motor Accident Claims Tribunal,



III Additional District and Sessions Judge, Gopichettipalayam, Erode - District
and be Pleased to dismiss the above claim and allow the CMA.

For Petitioner
For respondents

Mr. J.Chandran
Mr. M. Adhisree,
for
Mr. N. Manoharan,
for R1 to R3

ORDER

(Order of the Court was made by N.Sathish Kumar J.)

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 13.12.2021 passed by the learned III Additional District and Sessions Judge, Motor Accidents Claims Tribunal, Gobichettipalayam, Erode, in MCOP No.286 of 2018.

2. The appellant/Insurance Company is arrayed as third respondent before the Tribunal. The respondents 1 to 3 herein are the claimants, who are wife and children of the deceased, filed the claim petition seeking compensation of Rs.25,00,000/- for the death of one Selvaraj, who died in a motor accident that occurred on 18.01.2028. The fifth respondent herein is the rider and the sixth respondent herein is the owner of the offending vehicle, namely, Passion Pro-



Two wheeler bearing Registration No.TN36-AU-4685KA-43-6717.

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3. The case of the claimants is that on 18.01.2018, at about 7.20 p.m., after pouring the milk at milk society, while the deceased proceeding towards West on his motorcycle bearing No.TN33 E 8001, the fourth respondent herein, riding his motorcycle bearing No.TN36 AU 4685, came from east to west in a rash and negligent manner and dashed against the motor cycle, in which the deceased was travelling. As a result of the said accident, the deceased sustained serious head injuries and a fracture on his leg, despite treatment, succumbed to the injuries on 26.01.2018.

4. A criminal case in crime No.29 of 2018 was registered against the fourth respondent, rider of the motorcycle, for the offences under Sections 279, 337 IPC, which was later altered to Section 304(A) IPC. The deceased Selvaraj, was aged 53 years at the time of accident and was engaged in agriculture and milk vending, earning more than Rs. 4 lakhs per annum. On these grounds, the claim petition has been filed by the wife and children of the deceased against the rider & owner of the offending motorcycle and the appellant/Insurance Company.

5. The fourth respondent/rider and the fifth respondent/owner of the offending motorcycle remained exparte before the Tribunal. The appellant/



Insurance Company filed its counter statement, denying all the averments made in the claim petition. It was contended that the fourth respondent/rider of the offending motorcycle did not possess a valid driving licence at the relevant point of time. The deceased himself came in a rash and negligent manner and thereby invited the accident. It was further contended that the deceased was not wearing a helmet. Therefore, there was contributory negligence on the part of the deceased. The appellant/Insurance Company also denied the age, avocation and income of the deceased and prayed for dismissal of the claim petition.

6. Before the Tribunal, the first claimant examined herself as P.W.1, and one Mr.Senthil, Secretary of Suriyampalayam Cooperative Milk Producers Federation, was examined as P.W.2 and one Govindasamy, an eye-witness to the occurrence, was examined as P.W.3 and 24 documents were marked as Exs.P1 to P24. On the side of the appellant/Insurance Company one Mr.Jeyakrishnan, was examined as R.W.1 and One Ramkumar was examined as R.W.2 and six documents were marked as Exs.R1 to R6.

7. The Tribunal, upon consideration of the pleadings, the oral and documentary evidence on record, held that the accident occurred due to the rash and negligent riding of the fourth respondent herein and fixed the notional income of the deceased at Rs.20,000/- per month. Accordingly, the Tribunal



awarded a total sum of Rs.22,26,601/- as compensation and directed the appellant/Insurance Company to pay the said amount.

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8. Aggrieved by the said award, the appellant/Insurance Company has preferred the present appeal.

9. The learned counsel appearing for the appellant/Insurance Company would submit that though the liability has not been disputed, the appellant is challenging only the quantum of compensation. It is further submitted that the Tribunal has not deducted any amount towards the contributory negligence.

10. The learned counsel appearing for the claimants/respondents 1 to 3 would submit that apart from selling the milk, the deceased was also engaged in agricultural activities and was earning a sufficient income therefrom.

11. We have carefully considered the matter in the light of the submissions made on either side and perused the materials available on record.

12. Now the points that arise for considerations are :

1) Whether there was any contributory negligence on the part of the deceased ?

2) Whether the quantum of compensation fixed by the Tribunal is not



based on proper evidence ?

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13. The accident and liability are not in dispute. With regard to the submission of the learned counsel for the appellant relating to the fixation of the notional income at Rs.20,000/- per month, we have perused the entire evidence on record. The deceased, apart from selling milk, was also cultivating agricultural lands. Though agricultural operations may be continued by the family members, the fact remains that the evidence of the first claimant clearly indicates that the deceased was rearing 10 cows. The loss of the deceased has certainly affected the said business as well.

14. Though the evidence has been adduced to the effect that the deceased was earning about Rs.4 lakhs per annum by selling milk and by engaging in agricultural work, if he had been alive, his contribution to the family and his earning capacity could not have been disputed at all. Even in respect of rearing cattle, the same would yield several benefits including income, and in that regard, though agricultural activities may be continued by the family members, the deceased being an elder member of the family, his absence would certainly cause substantial loss to the overall income, which cannot be ignored altogether. Therefore, the fixation of notional income at Rs.20,000/- per month by the Tribunal is, in our view, reasonable and cannot be found fault with.



15. Though much emphasis has been placed by the learned counsel for the appellant on the ground that the Tribunal ought to have fixed the notional income only in accordance with the cost of inflation and the prevailing standards for the year 2018-19, even if the cost of inflation alone is taken into consideration, the notional income would come around Rs.15,000/- per month. However, in the present case, the deceased was not only engaged in milk vending business but was also rearing cattle and carrying on agricultural activities. Therefore, fixing the notional income at Rs.20,000/- per month is only reasonable for the purpose of awarding just compensation.

16. As far as the contention regarding contributory negligence on the part of the deceased is concerned, the eye witness has clearly spoken about the negligence on the part of the rider of the offending motorcycle. Once the Insurance Company raises a plea of contributory negligence, the burden squarely lies upon it to establish the same. Merely on the basis of certain pleadings, stray admissions, or inconsistencies with regard to the directions of the roads, the same by itself cannot be a ground to hold that there was contributory negligence on the part of the deceased.

17. Further, there is no evidence on record to show that the deceased was



not wearing a helmet at the relevant point of time. P.W.1, who is the wife of the deceased, is admittedly not an eye-witness to the occurrence and had seen the deceased only in the hospital. Therefore, the admission, if any elicited from P.W.1 with regard to the alleged non-wearing of helmet will not in any manner helpful to the case of the Insurance Company.

18. Even assuming for a moment that the deceased did not wear a helmet, the same cannot be a ground for the rider of the offending motorcycle to dash against the deceased and contend that there was negligence on the part of the deceased. It is also relevant to note that the rider of the offending motorcycle was not examined on the side of the appellant to substantiate the plea of contributory negligence.

19. Considering all the above facts and circumstances, this Court does not find any merit in the appeal, nor does it find any infirmity in the award passed by the Tribunal.

20. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs. The appellant/Insurance Company is directed to deposit the award amount within a period of three weeks from the date of receipt of a copy of this order.



(N.SATHISH KUMAR J.) (R.SAKTHIVEL J.)

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes

mrp

To

The III Additional District and Sessions Court,
Motor Accident Claims Tribunal,
Gopichettipalayam.



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