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CMA.(MD)No.384 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	07/11/2025
Date of Pronounced	28/01/2026

CORAM

The Hon'ble Ms.Justice **R.POORNIMA**

CMA(MD)No.384 of 2023

and

CMP(MD)Nos.4578 of 2023 and 2035 of 2025

The United India Insurance Company Limited,
Motor Third Party Claims Office, 3rd Floor,
West Veli Veethi (Near Ranimangammal Chatram),
Madurai-625 001.

Represented through its
Branch Manager, Madurai.

: Appellant/2nd Respondent

Vs.

1.Rabeek Begum
2.Minor Alhana Irsath
3.Minor Asaddeen Umar
(Minor respondents 2 and 3 represented
through their mother and next friend,
the 1st rspondent Rabeeka Begum)

4.Meeranji

5.Kursthie

: Respondents 1 to 5/
Petitioners

6.Mickel

: 6th Respondent/1st Respondent

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order passed by the Motor Accident Claims Tribunal/Additional District Judge, Theni, in MCOP No.176 of 2017, dated 03/07/2019 as against the appellant.



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For Appellant : Mr.N.Dilip Kumar
For R1 to R5 : Mr.Ananth C.Rajesh
For 6th Respondent : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal is preferred against the order passed by the Motor Accident Claims Tribunal/Additional District Judge, Theni, in MCOP No.176 of 2017, dated 03/07/2019.

2.The brief case of the claimant are as follows:-

On 14.07.2017 at about 04.50 hours, the deceased (Saleem) was riding his two wheeler No.TN-60-V-5808 from west to east direction on Bodinaickanur to Thenimain road. While he was proceeding near AIADMK Party Office, the driver of the Car No.TN-09-AU-5142 belonged to the 1st respondent drove the same in a rash and negligent manner and dashed against the two wheeler. In the said accident,the deceased sustained grievous injuries and he was immediately, taken to the Government Hospital, Theni. Thereafter, he was referred to Government Rajaji Hospital, Madurai, for further treatment, however, he succumbed to the injuries on 14.07.2017. Over the occurrence, a case in



Crime No.496 of 2017 was registered by the Palanichettiyatti Police Station for the offences under Sections 279 and 304(A) IPC against the driver of the offending vehicle.

3.At the time of accident, the deceased was aged about 32 years and was working as Electrical Engineer in Arun Enterprises, Theni and was earning Rs.30,000/- per month. Claiming compensation of Rs. 70,00,000/- for the death of the deceased Saleem, the legal heirs of the deceased filed a claim petition before the Tribunal.

4.The 1st respondent remained ex-parte before the Tribunal. The appellant Insurance Company filed their counter disputing the manner of the accident as projected by the claimants,contended that the accident was occurred due to the rash and negligent act of the deceased. The appellant further denied the occupation and income of the deceased and its liability to pay the compensation. It was further contended that the claim is excessive and exorbitant.

5.Before the Tribunal, on the side of the claimants, 4 witnesses were examined as P.W.1 to P.W.4 and 23 documents were marked as Exs.P1 to P23. On the side of the respondents, 2 witnesses



were examined as R.W.1 and R.W.2 and 4 documents were marked as Exs.R1 to R4.

6.After considering the material evidence and records, the Tribunal has awarded compensation of Rs.35,49,000/- together with interest at the rate of 7.5% per annum and directed the 2nd respondent Insurance Company to pay the said award amount.

7.Aggrieved over the order of the Tribunal, this Civil Miscellaneous Appeal has been preferred by the Appellant Insurance Company, disputing the manner of accident and their liability to pay the compensation.

8. It is further submitted that the deceased was solely responsible for the accident, as the accident took place on the left side of the road, as evident from the rough sketch (Ex.R2) and observation mahazar (Ex.R1). The insurance company, therefore, contended that the material on record clearly establishes that the deceased contributed to the accident and that the same is a case of head on collision. The Tribunal had erroneously fixed the entire negligence upon the insured driver which is proper as the deceased is also liable for contributory negligence.



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9.This Court considered the rival submission of the learned counsels appearing on either side and perused the materials available on record.

10. The issue that now arises for consideration before this Court is whether the first respondent driver alone was responsible for the accident ? or whether the deceased, who drove the vehicle in a rash and diligent manner also contributed for the accident?

11. It is not in dispute that the FIR was registered against the driver of the offending insured vehicle and the charge sheet was also filed against the driver of the said vehicle. Further the first respondent, the owner of the car did not contest the case and remained ex parte.

12. The appellant relied upon the evidence of R.W.1 and R.W.2 and Exs.R1 to R4. The Special Sub Inspector of Police attached to Palanichettipatty Police Station was summoned to the Court and examined as R.W.1, through whom Ex.R1-observation Mahazar and Ex.R2-rough sketch of the place of occurrence were marked. According to the 1st petitioner, the offending car bearing registration No.TN-09-AU-5142, was driven in a rash negligent manner and with bright light



and collided with the motorcycle ridden by her husband who was proceeding from East on the left side (northern side). Her husband, sustained injuries by the accident, and subsequently succumbed to the same. The said version was corroborated by P.W.3, eye witness to the occurrence. During cross-examination, P.W.3 stated that the occurrence took place on the northern side of the road. He further denied the suggestion that there was no barricade on the north and southern side of the road.

13. On the contrary, the driver of the offending vehicle was examined as R.W.2. He deposed that barricades had been placed in front of the political office and that, after noticing the two wheeler approaching from the opposite side, he stopped the vehicle. However the rider turned the two wheeler in a negligent manner hit the left side of the vehicle and fell down thereby sustaining injuries, he produced his driving license (Ex.R3), and also the Motor Vehicles Inspection report (Ex.R4). The Ex.R1 observation Mahazar, by the Special Sub Inspector of Police, Palanichettypatti Police Station, in which the place of occurrence is shown as the eastern side of AIADMK office, on the Southern side of the road. Ex.R2 is rough sketch, shows that the place of occurrence is marked on the Southern side of East West Road on the Bodinaickanur to



Theni Road. The rough sketch further shows that barricades were placed on both side of the road viz., on the northern side and southern sides. It is an admitted fact that the car proceeding from east to west, on the Southern side viz., left side. The two wheeler ought to have been ridden on the West-East on the northern side, however, the two wheeler took a turn after the barricades towards the Southern side, met with an accident. If the car had stopped after noticing the two wheeler, the accident could not have occurred. On the other hand, the two wheeler after crossing the barricades instead of entering into the northern road turned towards the Southern side and collided with the car. This clearly shows that both drivers are responsible for the accident. P.W.2, the eyewitness wrongly stated that the accident occurred on the Northern side.

14. Further, the rough sketch clearly shows that the accident occurred on the Southern side. Though the charge sheet was filed against the driver of the offending vehicle, the criminal case is pending before the criminal Court and not attained finality. The rough sketch and observation Mahazar filed on behalf of the appellant shows that the deceased also equally contributed for the accident, by riding his vehicle on the wrong side. Therefore, the Tribunal ought to have held the deceased is also responsible for contributory negligence, however, it



erroneously fixed the entire responsibility on the driver of the offending car which is improper. Accordingly, this Court holds that the accident occurred due to the contributory negligence and fixes the negligence, at 50% each on the driver of the offending vehicle, and the deceased.

15. Further, the Tribunal awarded a sum of Rs.4,00,000/- towards maintenance for the claimants 2 and 3 which is not permissible in law. The Tribunal awarded sum of Rs.50,000/- towards the 4th and 5th petitioners under the head of loss of loss and affection which is low. They are entitled to compensation under the head of loss of love and affection Rs.40,000/- each as per the dictum of the Hon'ble Supreme Court in *National Insurance Company Limited vs. PranaySethi* reported in *(2017) 16 SCC 680*. This Court modified the award by the Tribunal as follows:

Heads by the Tribunal	Award	Heads by the High Court	Award	Status
Loss of dependency	Rs.30,24,000/-	Loss of dependency	Rs.30,24,000/-	Confirmed but fixed 50% contributory negligence on the part of the deceased
Loss of consortium to the 1st petitioner	Rs.40,000/-	Loss of consortium to the 1st petitioner	Rs.40,000/-	confirmed



Loss of love and affection to the 4th & 5th petitioner	Rs.50,000/-	Loss of love and affection to the 4th & 5th petitioner	Rs.80,000	enhanced
Maintenance of the minors 2 nd & 3 rd petitioner	Rs.4,00,000/-	Loss of love and affection to the 2 nd & 3 rd petitioner	Rs.80,000/-	Modified & reduced
Loss of Estate	Rs.15,000/-	Loss of Estate	Rs.15,000/-	confirmed
Transportation	Rs.5,000/-	Transportation	Rs.5,000/-	confirmed
Funeral Expenses	Rs.15,000/-	Funeral Expenses	Rs.15,000/-	confirmed
Total	Rs.35,49,000/-	Total	Rs.32,59,000/-	reduced

16. Since, this Court fixed 50% of negligence on the part of the deceased, after deducting 50% negligence, the claimants are entitled to a sum of Rs.16,29,500/- (Rs.32,59,000/- – 50% = Rs.16,29,500/-) towards compensation.

17. Accordingly, this Civil Miscellaneous Appal is partly allowed and modified and the compensation amount awarded by the Tribunal is hereby modified and reduced. The appellant insurance company is directed to deposit the entire modified compensation amount of Rs.16,29,500/-, after deducting the amount if any already deposited, with proportionate interest and costs, within a period of eight weeks from the date of receipt of this order. On such deposit, the major claimants are entitled to withdraw their share as per the apportionment made by the



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Tribunal by making necessary application before the Tribunal. The share of the minor claimants shall be deposited in any one of the Nationalized Bank on fixed deposit scheme till they attain majority. The 1st claimant being the mother and natural guardian of the minor claimants is permitted to withdraw the interest accrued in the fixed deposit once in three months for the welfare of the minor children. Excess amount deposited if any, the same shall be returned back to the appellant Insurance Company. No costs. Consequently, connected miscellaneous petitions are closed.

28/01/2026

Index:Yes/No
Internet:Yes/No
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To

- 1.The Motor Accident Claims Tribunal/
Additional District Judge,
Theni.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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R.POORNIMA, J

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