BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12/03/2026

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH
AND
THE HONOURABLE MR JUSTICE P.DHANABAL

CMA(MD)Nos.1005 of 2021 and 955 of 2023
and
CMP(MD)Nos.9365 of 2021 and 13423 of 2023

(1).CMA(MD)No.1005 of 2021:-

The Reliance General Insurance Company Limited,
No.10/4/4, 2nd Floor,
Thaha Plaza, South Bye Pass Road,
Vannarpettai,
Tirunelveli-627 003,
Rep. By its Branch Manager. : Appellant/4th Respondent

.

Vs.

1.C.R.Chaasha
2.C.R.Cheesha : Respondents 1 and 2/ Petitioners 1 and 2
3.Sreekantan : 3rd Respondent/1st Respondent
4.Radhakrishnan
5.HDFC ERGO General Insurance Company Ltd.,
Rep. By its Branch Manager,
Office at "Rajas Mall"
Chettikulam Junction,
Nagercoil-629 001.
Nagercoil Village,
Agastheeswaram Taluk,
Kanyakumari District. : Respondents 4 and 5/ Respondents 2 and 3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order, dated 06/12/2019 made in MCOP No.63 of 2018 on the file of the Motor Accident Claims Tribunal/Special Judge for Forest Offence Cases/Subordinate Judge, Eraniel.

For Appellant	: Mrs.K.R.Shiva Shankari
For Respondents 1 and 2	: Mr.C.Shankar Prakash
For 3rd Respondent	: No appearance
For 4th Respondent	: Not claimed
For 5th Respondent	: Mr.V.Sakthivel

(2).CMA(MD)No.955 of 2023:-

HDFC ERGO General Insurance Company Limited,
Represented by its Branch Manager,
Rajas Mall, Chettikulam Junction,
Nagercoil-629 001,
Nagercoil Village,
Agastheeswaram Taluk,
Kanyakumari District. : Appellant/3rd Respondent

.

Vs.

1.C.R.Chaasha
2.C.R.Cheesha : Respondents 1 and 2/ Petitioners 1 and 2

3.Sreekantan
4.Radhakrishnan

5.The Reliance General Insurance Company Limited,
10/4/4, 2nd Floor, Thaha Plaza,
South By Pass Road, Vannarpettai,
Tirunelveli-627 003.
Represented by its Branch Manager. : Respondents 3 to 5/ Respondent Nos.1,2 and 4

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order, dated 06/12/2019 made in MCOP No.63 of 2018 on the file of the Motor Accident Claims Tribunal/Special Judge for Forest Offence Cases/Subordinate Judge, Eraniel.

For Appellant	: Mr.V.Sakthivel
For Respondents 1 and 2	: Mr.N.S.Ramakrishna Dass
For 3rd Respondent	: No appearance
For 4th Respondent	: Not claimed
For 5th Respondent	: Mrs.K.R.Shiva Shankari

COMMON JUDGMENT

(Common Judgment of the Court was made by the Hon'ble **P.DHANABAL, J.**)

CMA(MD)No.1005 of 2021 has been filed by the 4th respondent-The Reliance General Insurance Company against the fair and decreetal order passed by the Motor Accident Claims Tribunal/Sub Judge for Forest Offence Cases/Subordinate Judge, Eraniel, in MCOP No.63 of 2018, dated 06/12/2009, whereas, CMA(MD)No.955 of 2023 has been filed by the 3rd respondent - HDFC ERGO General Insurance Company Limited.

2.The respondents 1 and 2 in both the appeals are the claimants before the Tribunal and they filed the claim petition. The appellants in both appeals are the respondents 3 and 4 respectively before the Tribunal. The Tribunal has awarded a sum of Rs.67,77,190/- with interest at the rate of 7.5% per annum, by directing the respondents 3 and 4 to pay the said amount, at the ratio of 60% as against the 3rd respondent and 40% as against the 4th respondent.

3.Aggrieved by the fair and decreetal order, the respondents 3 and 4 have preferred these appeals.

4.The parties in these appeals are referred to as their rank before the Tribunal.

5.The petitioners are the daughters of the deceased one Radha. The said Radha was working as Headmistress in the Government Primary School and was earning a sum of Rs.49,579/- as monthly income and she was aged about 48 years at the time of the accident. On 24/01/2016, the parents of the petitioners were proceeding through a two wheeler bearing registration No.TN-75-S-1181 to Vellachivilai from Villukury. The said Radha who is the wife of the rider of the two wheeler was travelling as a pillion rider. At that time, while crossing the road from north to south in the NH47, another two wheeler bearing registration No.TN-75-K-5375 came in a high speed and dashed against the two wheeler of the petitioners' father. Due to the accident, the mother of the petitioners namely Radha sustained severe injuries and she was taken to Krishna Kumar Orthopaedic Hospital at Nagercoil. Thereafter, she died, on 28/01/2016 in the hospital. While so, the first respondent the rider of the two wheeler bearing registration No.TN-75-K-5375 lodged a false complaint against the father of the petitioners and thereafter, the father of the petitioners also died on 24/11/2017. The accident took place due to the negligent driving of the first respondent. Thereby the petitioners sought for compensation of Rs.82,00,000/-.

6.The first respondent filed a counter denying the averments made in the claim petition. According to the first respondent, they denied the manner of the accident, age, income and nature of the injuries sustained by the deceased Radha. The amount of compensation claimed by the petitioners is too high and exorbitant. The accident took place due to the negligence on the part of the father of the petitioners, who crossed the road without any signal and thereby, he himself invited the accident and the accident took place due to the negligent driving of the petitioners' father. FIR also came to be registered against him in Crime No.68 of 2016 on the file of the Eraniel Police Station. The first respondent's vehicle is noway responsible for the accident. The petitioners have not impleaded the owner of the vehicle. Therefore, the first respondent is not liable to pay any compensation.

7.The fourth respondent-The Reliance General Insurance Company filed a counter denying the averments made in the petition and they also denied the age, income and manner of the accident and their liability to pay the compensation. The amount claimed by the claimants is higher and exorbitant. The accident took place due to the negligent driving of the first respondent and the rider of the bike namely Chandra Bhanu, who rode the motorcycle by following the traffic Rules. At the time of the accident, three persons were travelling in the motorcycle bearing registration No.TN-75-S-1181 and thereby, lost control and balance and due to it, the accident was happened. Therefore, the 4th respondent Insurance Company is noway liable to pay the compensation.

8.Based on the above said pleadings, the Tribunal has framed the following issues for determination:-.

> 1.Whether the accident happened due to the negligence of the first respondent alone?
>
> 2.Whether the petitioners are entitled for compensation from the respondents? If so, what is the quantum of compensation?

9.Before the Tribunal, on the side of the petitioners, they examined 2 witnesses as PW1 and PW2 marked 10 documents as Exs.P1 to P10. On the side of the respondents, no oral or documentary evidence was adduced.

10.After analysing the evidence adduced on both sides, the Tribunal fixed the negligence on the part of the third respondent-HDFC ERGO General Insurance Company at 60% and as against the 4th respondent-The Reliance General Insurance Company, fixed at 40% and awarded a sum of Rs.67,77,190/-

together with interest @ 7.5% per annum from the date of claim petition till the date of realization.

11.Aggrieved by the above said award, both the respondents Insurance Company namely the respondents 3 and 4 have preferred these appeals.

12.The learned counsel appearing for the appellant in CMA No.955 of 2023, third respondent in the claim petition would submit that the accident took place due to the negligence on the part of the rider of the motorcycle, in which the deceased Radha travelled as a pillion rider and the FIR also registered as against the rider of the motorcycle in which the deceased travelled. Ex.P3 Rough Sketch clearly shows that the accident occurred on the southern side of the road. The first respondent was riding the two wheeler, came from east to west keeping left and due to sudden crossing of the rider of the two wheeler insured with the 4th respondent, who crossed the road from north-south, and thereby the accident was happened. Thereby fixation of 60% negligence on the part of the third respondent is without any basis. Though, the FIR has been registered as against the rider of the two wheeler namely Chandra Bhanu, the Tribunal fixed the liability on both the vehicles and the Tribunal ought to have exonerated the third respondent instead of fixing the liability of 60% on the part of the third respondent/appellant in CMA(MD)No.955 of 2023. Further, the Tribunal has not deducted income tax and only deducted a sum of Rs.1,000/- towards income tax from the monthly salary of the deceased and the same is not correct. Therefore, the award passed by the Tribunal is liable to be set aside.

13.The learned counsel appearing for the appellant in CMA(MD)No.1005 of 2022, the 4th respondent in the claim petition would contend that the accident took place due to the negligence on the part of the first respondent driver. The husband of the deceased, who rode the motorcycle by following the traffic Rules, but while crossing the road, the driver of the first respondent vehicle came in a rash and negligence manner and dashed against the two wheeler of the deceased and thereby, the deceased sustained injuries and thereafter, she died due to the injuries. Therefore, the entire negligence has to be fixed on the part of the rider of the vehicle which insured with the third respondent-Insurance Company. The vehicle in which the deceased travelling as a pillion rider was insured with the 4th respondent, but the owner of the vehicle has not been impleaded as a party to this proceedings. The accident took place due to the negligence on the part of the two wheeler insured with the third respondent Insurance Company. Taking advantage of the death of the deceased, the 1st respondent / vehicle rider had given a false complaint against the rider of the vehicle, in which the deceased travelled as a pillion rider. However, the claimants have examined PW2, who is the eye witness to the occurrence and he deposed about the negligence on the part of the 1st respondent vehicle, which was insured with the third respondent. There is no contra evidence adduced on the side of the third respondent and thereby, the Tribunal ought to have accepted the evidence of PW2 and ought to have fixed the liability as against the third respondent alone instead of fixing the liability of 60% on the part the third respondent and 40% on the part of the 4th respondent. More-over, the Tribunal has not properly deducted the income tax and thereby, award passed by the Tribunal is liable to be set aside.

14.The learned counsel appearing for the respondents 1 and 2/claimants in both the appeals would submit that the accident took place due to the negligence on the part of the driver of the second respondent, which is insured with the third respondent and in order to prove the negligence, they examined PW2 and he deposed about the negligence and thereby the respondents 1 and 2 who are the claimants before the Tribunal have proved the negligence. However, the Tribunal fixed the liability of 60% as against the third respondent and 40% as against the 4th respondent. The Tribunal has awarded a fair and just compensation and the Tribunal also rightly deducted the income tax and thereby both the appeals are liable to be dismissed.

15.This Court heard both sides and perused the records.

16.Now the point for determination is that the accident took place on who's negligence and whether the compensation awarded by the Tribunal is just and fair compensation?

17.In this case, there is no dispute in respect of the accident and the vehicles involved in the accident.

18.According to the respondents 1 and 2, who are the claimants before the Tribunal, the accident took place due to the negligence on the part of the driver of the 2nd respondent vehicle, which was insured with the third respondent and in order to prove the negligence, they examined PW2, who is the eye witness to the occurrence. He categorically deposed about the manner of the accident. In order to rebut the evidence of PW2, no contra evidence was adduced by the respondents and the evidence of PW2 clearly shows the negligence on the part of the driver of the 2nd respondent. Though the FIR has been registered as against the rider of the two wheeler, in which the deceased travelled as pillion rider, the evidence of PW2 is cogent and natural, thereby it is acceptable.

19.Though the FIR has been registered as against the father of the petitioners, who is the rider of the two wheeler, in which the deceased was travelling as a pillion rider, mere registration of the FIR is not sufficient to prove the negligence. There is no contra evidence adduced by the respondents, thereby the Tribunal after considering the evidence fastened the liability against both the Insurance Companies.

20.The Tribunal after considering the evidence adduced on both sides fixed 60% as against the third respondent and fixed 40% as against the 4th respondent. The Tribunal after analysing the evidence, applied its mind and fixed the liability and thereby, no interference is required for the well considered findings given by the Tribunal in respect of the negligence. Therefore, this Court need not interfere with the order of the Tribunal.

21.As far as the quantum is concerned, the deceased was a Government employee and her last drawn salary was Rs.49,579/- and the age of the deceased was 48 years at the time of the accident and the same was not denied by the respondents. Therefore, the Tribunal fixed income as Rs.49,579/- and also added 30% towards future prospects in the monthly salary, thereby, the monthly salary of the deceased was fixed at **Rs.64,453/-**. So the annual income of the deceased comes to Rs.7,73,436/-. Since the income of the deceased is within the slab of the income tax, 10% of the income has to be deducted towards income tax and thereby deducted **Rs.77,343/-** and therefore, the income of the deceased comes to **Rs.6,96,093/-**. However, the Tribunal deducted Rs.1,000/-

towards income tax for the monthly income and the same is not correct. Considering the dependents of the deceased, 1/3rd income has to be deducted for her personal expenses and thereby, the annual income of the deceased comes to **Rs.4,64,062/-**. Considering the age of the deceased, multiplier '13' is adopted and thereby, the loss of dependency comes to **Rs.60,32,806/-**. The Tribunal has awarded consortium to the petitioners 1 and 2 at the rate of Rs.20,000/- per head and awarded loss of love and affection each Rs.20,000/-, transportation to the hospital at Rs.5,000/-, damages to clothing and articles at Rs.5,000/- and loss of estate at Rs.15,000/- and funeral expenses at Rs.15,000/-. Since the petitioners are the daughters of the deceased, they are entitled to each Rs.40,000/- towards loss of consortium, in total **Rs.80,000/-** and also they are entitled to **Rs.15,000/-** towards loss of estate and **Rs.15,000/-** towards funeral expenses as per the **Pranay Sethi's** case. Apart from the heads of loss of consortium, the petitioners are not entitled to any other compensation in other heads and thereby, the award comes to **Rs.61,42,806/-** rounded off to **Rs.61,00,000/-**. Both the appellants are directed to deposit the modified amount as per the apportionment of negligence fixed by the Tribunal, within a period of four weeks from the date of the receipt of a copy of this judgment, after deducting the amount if any paid to the claimants. On such deposit being made by the appellants, the respondents 1 and 2/claimants are entitled to withdraw the amount after filing proper application.

22.In the result, with the above modification, both civil miscellaneous appeals are **partly allowed**. No costs. Consequently, connected Miscellaneous Petitions are closed.

(N.A.V.,J) **(P.D.B.,J)**
12/03/2026

Index:Yes/No
Internet:Yes/No
er

To,

1.The Motor Accident Claims Tribunal/
Special Judge for Forest Offence Cases/
Subordinate Judge, Eraniel,
Nagercoil District.

2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.

N. ANAND VENKATESH.J
AND
P.DHANABAL.J

.

er

CMA(MD)Nos.1005 of 2021 and 955 of 2023

12/03/2026