

**(2013) 09 MAD CK 0266**

**Madras High Court**

**Case No:** C.M.A. No. 1818 of 2009

The New India Assurance Co.  
Ltd.

APPELLANT

Vs

N.K. Balasubramaniam and  
Others

RESPONDENT

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**Date of Decision:** Sept. 25, 2013

**Hon'ble Judges:** C.S. Karnan, J

**Bench:** Single Bench

**Advocate:** M. Krishnamoorthi, for the Appellant; N. Manoharan for R1 to R4 and Given up--R5, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

C.S. Karnan, J.

The appellant/second respondent has preferred the present appeal against the judgment and decree dated 20.10.2008, made in M.A.C.T.O.P. No. 756 of 2007, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No. III, Dharapuram. The short facts of the case are as follows:--

The petitioners, who are the brother and sisters of the deceased Murugesan had filed a claim petition in M.A.C.T.O.P. No. 756 of 2007, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No. III, Dharapuram, claiming compensation of a sum of Rs. 10,00,000/- from the respondents, who are the owner and insurer of the offending vehicle, for the death of the said Murugesan in a motor vehicle accident.

2. It was submitted that on 28.02.2006, at about 03.00 p.m., the deceased Murugesan was driving a car bearing registration No. TN33 K1234, on Karur-Coimbatore Main Road and when the car was near Karupalayam, the first respondent's lorry bearing registration No. TN09 Z7455, coming on the same road and driven at a high speed and in a rash and negligent manner, dashed against the

deceased and caused the accident. As a result, the deceased Murugesan had sustained grievous injuries and died on the spot. Hence, the petitioners had filed the claim petition.

3. The second respondent Insurance Company, in their counter statement, had submitted that the accident was not caused due to rash and negligent driving by the driver of the first respondent's lorry, as alleged in the claim petition and that the deceased had also contributed negligence for the occurrence of the accident. It was submitted that the petitioners have to prove that the driver of both the vehicles involved in the accident had a valid licence to drive the vehicles at the time of the accident. The averments made in the claim petition regarding age, income and occupation of the deceased and the legal heirship of the petitioners were also not admitted. It was submitted that the claim was excessive.

4. On considering the averments of both sides, the Tribunal had framed three issues namely:

i. Whether the accident was caused due to the rash and negligent driving by the driver of the first respondent's lorry?

ii. Whether the petitioners are entitled to get compensation? and

iii. If so, what is the quantum?

5. On the petitioners' side three witnesses were examined as P.Ws.1 to 3 and eleven documents were marked as Exs.P1 to P11 namely FIR, postmortem certificate, death and legal heir certificates of Rajammal and Murugesan and rough sketch. On the respondents' side no witness was examined no document was marked.

6. P.W.1 brother of the deceased had adduced evidence, which is corroborative of the statements made in the claim petition regarding manner of accident and in support of his evidence, he had marked Exs.P1 to P11.

7. P.W.2 K. Palanisamy, eye-witness of the accident, had also adduced evidence that the accident had been caused only due to the rash and negligent driving by the driver of the first respondent's lorry.

8. On scrutiny of Exs.P1 and P9, it is seen that FIR had been filed against the driver of the lorry and that the Police, after investigation, had also filed a charge sheet against him. Though it was contended on the side of the respondents that the deceased had also contributed negligence for the occurrence of the accident, they had not examined the lorry driver to back their contentions.

9. On scrutiny of Ex.P10, it is seen that the deceased had a valid licence to drive the car at the time of accident. Hence, the Tribunal, on scrutiny of the evidences of P.Ws.1 and 2 and on scrutiny of rough sketch marked as Ex.P2 and on scrutiny of other documentary evidences, held that the accident had been caused by the rash and negligent driving by the driver of the first respondent's lorry and hence held

that the respondents liable to pay compensation to the petitioners.

10. On scrutiny of Ex.P10 it is seen that the deceased was aged 41 years at the time of the accident. P.W.3 had adduced evidence that the deceased was earning a sum of Rs. 6,000/- per month as a driver. As no documentary evidence had been produced to prove the income of the deceased, the Tribunal had held the notional income of the deceased at Rs. 3,000/- per month. The Tribunal, on adopting a multiplier and after deducting 1/3rd of income of the deceased for his personal expenses, awarded a sum of Rs. 3,60,000/- as compensation under the head of loss of income ( $3,000 \times \frac{2}{3} \times 12 \times 15$ ), Rs. 5,000/- was awarded for funeral expenses. In total, the Tribunal had awarded a sum of Rs. 3,65,000/- as compensation to the petitioners and directed the second respondent Insurance Company on behalf of the first respondent to pay the said sum together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation with costs, within one month from the date of its order.

11. Aggrieved by the Award passed by the Tribunal, the second respondent/Insurance Company has preferred the present appeal.

12. The learned counsel for the appellant has contended in his appeal that the Tribunal had erred in awarding an excessive sum of Rs. 3,65,000/- as compensation for the death of a man aged 41 years as the brothers and sisters of the deceased, who are the claimants, are not dependent on the income of the deceased. It is contended that the Tribunal ought to have awarded only a sum of Rs. 50,000/- as compensation payable under the no fault liability as the claimants are not dependants on the deceased. It is also contended that the multiplier adopted by the Tribunal and the award passed are excessive and hence it is prayed to scale down the award passed.

13. The very competent counsel for the respondents has submitted that the age of the deceased was 41 years at the time of the accident and he was a driver by profession and earning Rs. 7,500/- per month. The deceased had contributed his income to the claimants since they are blood brothers and sisters of the deceased. The Tribunal had not granted adequate compensation under the head of loss of income, since the deceased was earning Rs. 7,500/- per month. Further, the Tribunal had not granted compensation under the head of loss of love and affection and funeral expenses.

14. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence, liability and quantum of compensation. This Court is of the further view that the Tribunal had decided the negligence and liability on the basis of the criminal proceedings initiated against the driver of the offending vehicle and after observing that the vehicle had been insured with the Insurance Company. The

said finding had not been opposed by the Insurance Company by way of producing any evidence. Therefore, the above appeal does not give enough force to allow it. Hence, this Court dismiss the appeal.

15. As per the Court records, it is seen that the Insurance Company had already deposited a portion of the compensation amount. Now, this Court directs the Insurance Company to deposit the remaining compensation amount with accrued interest thereon, to the credit of M.A.C.T.O.P. No. 756 of 2007, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No. III, Dharapuram, within a period of four weeks, from the date of receipt of a copy of this Order.

16. After such a deposit having been made, it is open to the claimants to withdraw the entire compensation amount with accrued interest thereon, lying in the credit of M.A.C.T.O.P. No. 756 of 2007, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No. III, Dharapuram, after filing a memo along with a copy of this Order. In the result, the appeal is dismissed and the judgment and decree dated 20.10.2008, made in M.A.C.T.O.P. No. 756 of 2007, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No. III, Dharapuram, is confirmed. Consequently, connected miscellaneous petition is closed. There is no order as to costs.