IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

**C.M.A. No.1488 of 2022**
**and C.M.P.No.11027 of 2022**

National Insurance Co. Ltd.,
No.751, Anna Salai, 3rd Floor,
Chennai 600 002. .. Appellant

Vs.

1.Girija
2.Minor G.Amarnath
(rep. By his mother and next friend, R1)
3.Gunasekaran
4.Ambika
5.Mohamed Saud .. Respondents

**Prayer**: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.02.2016, made in M.C.O.P. No.2359 of 2014, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

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| For Appellant | : Mr.M.Krishnamoorthy |
| For RR1 & 2 | : Dr.V.Venkatesan |
| For RR3 & 4 | : Mr.B.Sudhir Kumar |

**JUDGMENT**

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 29.02.2016, made in M.C.O.P. No.2359 of 2014, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is the 2nd respondent in M.C.O.P. No.2359 of 2014, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai. The respondents 1 to 4/claimants filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one G.Gopikrishnan, who died in the accident that took place on 07.02.2014.

3.According to the respondents 1 to 4, on the date of accident, at about 22.15 hours, when the deceased G.Gopikrishnan was riding as a pillion rider in a Motorcycle bearing Registration No.TN-19-J-9333, driven by the 5th respondent, near Kishkottaiyur, Kanchipuram District, the 5th respondent rode the Motorcycle in a rash and negligent manner endangering public safety and hit on the roadside advertisement banner and caused the accident. In the accident, the said G.Gopikrishnan sustained fatal injuries and died on the spot. The accident occurred only due to rash and negligent riding of Motorcycle by the 5th respondent and hence, the respondents 1 to 4 filed the said claim petition claiming compensation against the 5th respondent and appellant-Insurance Company as owner-cum-rider and insurer of the Motorcycle respectively.

4.The 5th respondent, owner-cum-rider of the Motorcycle, remained exparte before the Tribunal.

5.The appellant, insurer of the Motorcycle, filed counter statement and denied all the averments made by the respondents 1 to 4 in the claim petition, including the manner of accident. The appellant-Insurance Company claimed that the respondents 1 to 4 have to prove that the 5th respondent possessed valid driving license to ply the vehicle and the insurance policy for the vehicle was in force at the time of accident. The respondents 1 to 4 also have to prove the age, avocation and income of the deceased G.Gopikrishnan to claim compensation. In any event, the total compensation claimed by the respondents 1 to 4 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent, wife of the deceased G.Gopikrishnan was examined as P.W.1, one Balasankar, eye-witness to the accident was examined as P.W.2 and one Krishnaprasath, employer of the deceased G.Gopikrishnan was examined as P.W.3 and 13 documents were marked as Exs.P1 to P13. The appellant-Insurance Company did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding of Motorcycle by the 5th respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.42,67,000/- as compensation to the respondents 1 to 4.

8.Against the said award of the Tribunal dated 29.02.2016, made in M.C.O.P. No.2359 of 2014, the appellant - Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that at the time of accident, two pillion riders including the deceased G.Gopikrishnan traveled in the Motorcycle driven and owned by the 5th respondent. The Tribunal ought to have dismissed the claim petition as against the appellant, as the 5th respondent-insured has permitted two pillion riders to travel in a Motorcycle, violating the policy and statute conditions viz., Section 128(1) of the Motor Vehicles Act. The Tribunal ought to have held that the deceased also contributed to the accident by travelling as one of the two pillion riders in a Motorcycle which has the capacity to carry only one pillion rider. The Tribunal has exorbitantly awarded a sum of Rs.42,67,000/- as against the claim of Rs.25,00,000/- for the death of a man who was aged 37 years and whose avocation and income was not proved by any acceptable documentary evidence. The Tribunal erred in fixing the monthly income of the deceased at Rs.18,295/- based on Ex.P8 – the alleged appointment letter issued by the Sodexo Food Solutions India Pvt. Ltd. Ex.P8 is undated and also did not contain the signature of the deceased, even though a column was provided for the employee's signature. The Tribunal failed to consider the fact that as per Ex.P8, the appointment was given only on contract basis from 21.01.2014 to 20.01.2015 and not a permanent one. The Identify Card of the deceased marked as Ex.P11 was completely at variance in pattern and style. The Tribunal ought to have rejected Ex.P8 and Ex.P11. Since the appointment was on contractual basis for a year, the Tribunal ought not to have granted 50% enhancement towards future prospects. The 4th respondent, father of the deceased G.Gopikrishnan is not a dependent of the deceased. Hence, following the judgment of the Hon'ble Apex Court reported in ***2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another],*** the Tribunal ought to have deducted 1/3rd towards personal expenses of the deceased, instead of deducting 1/4th. The amounts awarded by the Tribunal under the heads of loss of love and affection and loss of consortium are also excessive and hence, prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the respondents 1 & 2 and 3 & 4 made submissions in support of the award of the Tribunal with regard to negligence fixed on the 5th respondent/rider of the Motorcycle and liability fixed on the appellant-Insurance Company as insurer of the Motorcycle. It is further submitted that the Tribunal, on perusal of the oral and documentary evidence available on record with regard to educational qualification, avocation and income of the deceased, fixed the monthly income of the deceased at Rs.18,295/- and awarded compensation under the head of loss of dependency. The amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant-Insurance Company, respondents 1 and 2 as well as the respondents 3 and 4 and perused the entire materials available on record.

12.From the materials on record, it is seen that it is the case of the respondents 1 to 4 that while the deceased G.Gopikrishnan was riding as a pillion rider in a Motorcycle, the 5th respondent/rider-cum-owner of the said Motorcycle drove the same in a rash and negligent manner, dashed on the roadside banner and caused the accident. To substantiate their case, they have examined one Balasankar, eye-witness to the accident as P.W.2 and marked the FIR which was registered against the 5th respondent as Ex.P1. It is the case of the appellant-Insurance Company that the deceased G.Gopikrishnan also contributed negligence to the accident by travelling as one of the two pillion riders in the Motorcycle at the time of accident. To substantiate their case, the appellant did not let in any oral or documentary evidence. The Tribunal considering the evidence of P.W.1, P.W.2 and Ex.P1 - FIR, in the absence of any contra evidence on the side of the appellant-Insurance Company, held that the accident occurred only due to rash and negligent driving by the 5th respondent/rider of the Motorcycle. According to the appellant, at the time of accident, three persons including the deceased G.Gopikrishnan travelled in the Motorcycle. When three persons are travelling in a Motorcycle wherein only two persons were permitted to travel, the rider of the Motorcycle will not have full control over the Motorcycle as most of the time, he will be almost sitting in the petrol tank of the Motorcycle. This Court has consistently taken a view that when three persons travel in a Motorcycle, they also contribute negligence and fixed 20% contributory negligence on the part of the rider of the Motorcycle as well as on pillion riders. The issue of contributory negligence fixed on the part of three persons travelling in a Motorcycle came up for consideration before the Hon'ble Apex Court. In the judgment reported in ***2020 (1) TN MAC 161 (SC) [Mohammed Siddique and another Vs. National Insurance Co. Ltd., and others]***, the Hon'ble Apex Court has held that even if three persons were travelling in a Motorcycle, it must be proved that they also contributed for the accident. Unless negligence is proved on the part of three persons travelling in the Motorcycle, no negligence can be automatically fixed on them. The relevant portion of the said judgment reads as follows:

> *"**13.** But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more*

*person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the* *evidence on record. Nothing was extracted from PW3 to the effect that 2 persons on the pillion added to the imbalance.*

***14.*** *Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside."*

In view of the above fact that negligence was not proved on the deceased and as per the judgment of the Hon'ble Apex Court, contributory negligence cannot be fixed on the part of the deceased G.Gopikrishnan and the finding of the Tribunal with regard to negligence fixed on the part of the 5th respondent/rider of the Motorcycle and liability on the part of the appellant, insurer of the said Motorcycle, suffers no interference by this Court.

13.As far as the quantum of compensation is concerned, it is the case of the learned counsel appearing for the respondents 1 to 4 that the deceased G.Gopikrishnan was aged 34 years, working as a Kitchen Supervisor in

M/s.Great Lake Institute of Management which was owned by M/s.Sodexo Food Solutions India Pvt. Ltd., and was earning a sum of Rs.18,295/- per month. To substantiate the same, they have marked Ex.P8 – appointment letter and examined one Krishnaprasad as P.W.3, employer in M/s.Sodexo Food Solutions India Pvt. Ltd., Chennai, who deposed to that effect. The learned counsel appearing for the respondents 1 to 4 has not denied the contention of the learned counsel appearing for the appellant-Insurance Company that there is no date in the appointment letter marked as Ex.P8 and no signature in Ex.P11 – identity card of the deceased G.Gopikrishnan. Considering the above submission and in the absence of any materials with regard to income, the monthly income of Rs.18,295/- fixed by the Tribunal is excessive. The accident is of the year 2014. Considering the year of accident, educational qualification and nature of work done by the deceased, a sum of Rs.11,500/- per month is fixed as notional income of the deceased.

14.As per Ex.P7 - original passport of the deceased produced by the 1st respondent/wife of the deceased as P.W.1, the deceased was aged 37 years at the time of accident. There are four dependents of the deceased. The Tribunal though rightly applied the multiplier as '15' and deducted 1/4th towards personal expenses of the deceased, erroneously granted 50% enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in ***2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others],*** the respondents 1 to 4 are entitled to only 40% enhancement towards future prospects. Hence, by fixing the notional income of the deceased as Rs.11,500/- per month, granting 40% enhancement towards future prospects, applying multiplier '15' and deducting 1/4th towards personal expenses of the deceased, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.21,73,500/- {[Rs.11,500/- + Rs.4,600/- (40% of Rs.11,500/-)] x 12 x 15 x 3/4}. The Tribunal has excessively awarded a sum of Rs.4,00,000/- towards loss of love and affection to the respondents 2 to 4 and the same is set aside. The 2nd respondent who is the minor son of the deceased G.Gopikrishnan is entitled to only Rs.40,000/- towards loss of parental consortium and the respondents 3 and 4 who are the parents of the deceased

G.Gopikrishnan is entitled to only Rs.40,000/- each towards loss of filial consortium. The Tribunal has also excessively awarded a sum of Rs.1,00,000/- to the 1st respondent towards loss of consortium, Rs.50,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. As per the judgment of the Hon'ble Apex Court reported in ***2017 (2) TN MAC 609 (SC)*** (cited supra), under the conventional heads, the spouse of the deceased is entitled to only Rs.40,000/- towards loss of consortium, the dependents are entitled to Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Hence, the amounts awarded by the Tribunal towards loss of consortium is reduced to Rs.40,000/- and the amounts awarded towards loss of estate and funeral expenses are reduced to Rs.15,000/- each. Thus, the compensation awarded by the Tribunal is modified as follows:

| **S. No** | **Description** | **Amount awarded by Tribunal (Rs)** | **Amount awarded by this Court (Rs)** | **Award confirmed or enhanced or granted** |
|---|---|---|---|---|
| 1. | Loss of dependency | 36,92,160/- | 21,73,500/- | Reduced |
| 2. | Loss of consortium to 1st respondent | 1,00,000/- | 40,000/- | Reduced |

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|---|---|---|---|---|
| 3. | Loss of love and affection to respondents 2 to 4 | 4,00,000/- | - | Set aside |
| 4. | Loss of parental consortium to 2nd respondent | - | 40,000/- | Granted |
| 5. | Loss of filial consortium to respondents 3 & 4 | - | 80,000/- | Granted |
| 6. | Loss of estate | 50,000/- | 15,000/- | Reduced |
| 7. | Funeral expenses | 25,000/- | 15,000/- | Reduced |
| | **Total** | **42,67,160/- rounded off to 42,67,000/-** | **23,63,500/-** | **Reduced by Rs.19,03,500/-** |

15.In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.42,67,000/- is modified and reduced to Rs.23,63,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.2359 of 2014. On such deposit, the respondents 1, 4 and 5 are permitted to withdraw their share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 2nd respondent is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st respondent, mother of the minor 2nd respondent is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 2nd respondent. The appellant-Insurance Company is permitted to withdraw the excess amount, lying in the credit of M.C.O.P. No.2359 of 2014, if the entire award amount has already been deposited by them. It is made clear that if the respondents 1 to 4 have already withdrawn the entire award amount, the appellant/Insurance Company is not entitled to recover the same from the respondents 1 to 4. Consequently, connected Miscellaneous Petition is closed. No costs.

**(V.M.V., J)** **(S.M., J)**
10.10.2022

Index : Yes/No
Speaking Order : Yes/No

(gsa)

**V.M.VELUMANI, J.**
**and**
**SUNDER MOHAN, J.**

(gsa)

To

1.The II Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.

2.The Section Officer,
V.R Section,
High Court, Madras.

C.M.A. No.1488 of 2022

10.10.2022