

**(2011) 02 MAD CK 0439**

**In the Madras High Court**

**Case No :** Civil Miscellaneous Appeal No. 4126 of 2005

Branch Manager National Insurance Company Limited.

APPELLANT

Vs

B. Rasheeth and Others

RESPONDENT

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**Date of Decision :** 14-02-2011

**Acts Referred:**

**Citation :** (2011) 02 MAD CK 0439

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

**Bench :** Single Bench

**Advocate :** D. Baskaran, for the Appellant; M. Aniruthan, for R1 to R5, for the Respondent

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## **Judgement**

C.S. Karnan, J.—The above appeal has been filed by the Appellant / Insurance Company, against the award and decree dated 17.06.2005 made in M.C.O.P. No. 1435 of 2003 on the file of the Motor Accidents Claims Tribunal (Sub Judge), Krishnagiri.

2. The short facts of the case are as follows:

On 17.08.2002, at around 09.20 a.m., the deceased Pyas was proceeding on his bicycle to attend School from Krishnagiri-Dharmapuri Road, when at that time, a lorry bearing Registration No. TN-29-4797 came from Dharmapuri side and dashed against the cyclist, in the result, he had succumbed to his injuries, hence, the legal heirs of the deceased had filed the Claim Petition against the Respondents for compensation of Rs. 10,00,000/- with interest.

3. The second Respondent had filed a counter statement and resisted the claim petition. The Respondent denied the accident which was committed by the driver of the lorry. Actually the deceased himself caused the accident in a reckless manner. The claim amount is an excessive one.

4. On pleading of both parties, the Tribunal had framed two issues for consideration, viz.,:

1. Who was responsible for the accident?
2. Whether the claimants are entitled to receive compensation? If so, what is the quantum of compensation?
5. On the side of the claimants, two witnesses were examined and four documents were marked. On the side of the Respondents, no witness was examined and no document was marked. P.W.2 is the eyewitness to the accident had stated that the deceased was proceeding on the mud road to his left side on the Dharmapuri-Krishnagiri road and at that point of time the driver of the lorry had driven his vehicle in a rash and negligent manner, consequently the accident had occurred.
6. P.W.1, had adduced evidence stating that the deceased was his son, other claimants are the mother, brothers and sister of the deceased. At the time of the accident, the deceased was aged about 16 years and was studying in XI Standard. In order to prove the accident, age and occupation of the deceased the claimant had marked First Information Report and School Certificate.
7. On considering the evidences of the witnesses, the Tribunal had awarded Rs. 4,54,000/- as compensation with 9% interest. Aggrieved by the said award the Appellant-Insurance Company has filed the present appeal.
8. Learned Counsel for the Appellant argued that the Tribunal had awarded compensation a sum of Rs. 2,00,000/- towards loss of love and affection and Rs. 1,00,000/- towards loss of expectation of life. The learned Counsel for the claimant argued that the claimants are five numbers and the deceased age was 16 years, a school going boy, therefore, the compensation is not on the higher side.
9. In view of the facts and circumstances of the case and arguments advanced by the learned Counsel on either side and on perusing the impugned award of the Tribunal, this Court is of the considered opinion that a sum of Rs. 2,00,000/- towards loss of love and affection and Rs. 1,00,000/- towards loss of expectation of life is not appropriate, therefore, this Court modifies the compensation as follows:  
  
Rs. 1,80,000/- towards loss of dependency;  
  
Rs. 75,000/- towards loss of love and affection;  
  
Rs. 10,000/- towards funeral expenses; and  
  
Rs. 25,000/- towards mental agony.  
  
In total this Court awards Rs. 2,90,000/- with interest at the rate of 9; per annum. Therefore, the original award of a sum of Rs. 4,54,000/- granted by the Tribunal has been scaled down to Rs. 2,90,000/-.
10. Therefore, it is open to the claimants to withdraw their apportioned share amount equally among themselves with accrued interest thereon lying in the

credit of M.C.O.P. No. 1435 of 2003, on the file of the Motor Accidents Claims Tribunal, Sub Judge, Krishnagiri, after filing necessary payment out application in accordance with law, subject to withdrawals if any, made already. Further subject to minor claimants i.e. Respondents 3 to 5 become major. Likewise, the Appellant is at liberty to withdraw the excess compensation amount with accrued interest thereon after observing necessary formalities of the Court below.

11. In the result, the above Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree dated 17.06.2005 made in M.C.O.P. No. 1435 of 2003 on the file of the Motor Accidents Claims Tribunal (Sub Judge), Krishnagiri, is modified.

There is no order as to costs. Consequently, connected Civil Miscellaneous Petition No. 20135 of 2005 is closed.