
(2026) 02 MAD CK 1726

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 292 Of 2022, Cross Objection No.95 Of 2025, Civil Miscellaneous Petition No. 2008 Of 2022

M/s.United India Insurance Co., Ltd And Others

APPELLANT

Vs

S.Thakira Banu And Others

RESPONDENT

Date of Decision : 10-02-2026

Acts Referred:

Citation : (2026) 02 MAD CK 1726

Hon'ble Judges : C.V. Karthikeyan, J;K.Kumaresh Babu, J

Bench : Division Bench

Advocate : Arun Kumar, M.Guruprasad

Final Decision : Partly Allowed/ Dismissed/ Disposed Of

Judgement

K.Kumaresh Babu, J

1. The present Civil Miscellaneous Appeal has been filed by the insurance company, challenging the award and decree dated 29.04.2021 passed in M.C.O.P. No. 431 of 2018 on the file of the Motor Accidents Claims Tribunal (Special District Court), Erode and a cross objection has also been filed by the claimant.

2) The facts giving rise to the present appeal and the cross objection, in brief, are that the deceased, Mr. Sathik Basha, aged about 19 years, was working as a mechanic. On 31.12.2017 at about 2.25 p.m., he was riding a motorcycle bearing Registration No. TN-45-P-1742, after picking up the vehicle from Karthik Water Services, and was proceeding from west to east towards his residence at Pallayapalayam. While the deceased was riding the motorcycle cautiously, keeping to the left side of the road and adhering to traffic rules, an Eicher Van bearing Registration No. TN-16-A-8706, driven by the 2nd respondent in a rash and negligent manner and in violation of traffic rules, dashed against the motorcycle from behind near Veera Palayam.

3) As a result of the impact, the deceased was thrown off the motorcycle and sustained grievous injuries. He was immediately taken to the Government

Hospital, Erode, where he was diagnosed with multiple grievous injuries, including severe head injuries involving the frontal, temporal, occipital and parietal regions, fractures to the chest, fracture of the lower one-third of the right thigh bone, segmental fractures of both bones in the right leg, and other injuries. Due to the grievous head injuries and multiple fractures, accompanied by profuse bleeding from the nose and ear, the deceased developed intracranial blood clots, resulting in loss of consciousness and mental impairment. During the course of hospitalization, the deceased underwent three major surgeries to the brain, right leg and right thigh. Owing to the nature of injuries, he suffered permanent disability, resulting in complete loss of earning capacity.

4) Consequently, the deceased, represented by his mother, the 1st respondent, who is also his sole legal heir, filed a claim petition in M.C.O.P. No. 431 of 2018 before the Motor Accidents Claims Tribunal, Erode, seeking compensation of Rs.30,00,000/- for the injuries and disability suffered by him due to the accident, against the appellants and the 2nd respondent herein. However, despite prolonged medical treatment, the deceased succumbed to his injuries and passed away on 24.11.2018.

5) Thereafter, the claim petition was amended and the 1st respondent, being the sole dependent of the deceased, sought enhanced compensation of Rs.50,00,000/-. Upon appreciation of the oral and documentary evidence, the Claims Tribunal held that the accident occurred due to the negligence of the 2nd respondent to the extent of 75%, while fixing 25% contributory negligence on the part of the deceased. The Tribunal assessed the total compensation at Rs.33,57,696/- and, after deducting 25% towards contributory negligence, awarded a sum of Rs.25,18,272/- with interest at 9% per annum, by its award dated 29.04.2021. The 1st appellant / insurer was directed to deposit the award amount within one month, with liberty to recover the same from the 2nd respondent.

6) Heard Mr. S. Arunkumar, learned counsel appearing for the appellant–Insurance Company, and Mr. M. Guruprasad, learned counsel appearing for the 1st respondent / cross-objector.

7) The learned counsel for the appellant contended that the Tribunal erred in awarding an exorbitant compensation of Rs.33,57,696/- without proper legal basis. It was further contended that the Tribunal gravely erred in awarding medical expenses to the tune of Rs.20,54,496/-, as the same were neither duly proved by acceptable evidence nor established to have been wholly incurred by the claimant.

8) The learned counsel further submitted that the award of Rs.2,00,000/-towards pain and suffering is contrary to the principles laid down by this Court in National Insurance Co. Ltd. Vs. Sivabakkiyam (Deceased) and others reported in 2018 (2) TNMAC 355, and that the Tribunal erred in awarding interest at the rate of 9% per annum, which is on the higher side. It was also contended that the death of

the deceased was not the immediate result of the accident.

9) Per contra, the learned counsel for the 1st respondent / cross-objector submitted that the compensation awarded by the Tribunal is meagre and warrants enhancement. According to him, though a sum of Rs.50,00,000/- was claimed based on substantive materials, the Tribunal awarded only Rs.25,18,272/-, which is wholly inadequate. It was further contended that the deceased was a mechanic working in a service station and earning Rs.15,000/- per month, but the Tribunal, without valid reasons, fixed the notional income at Rs.8,400/-, deducted 50% towards personal expenses and arrived at a monthly contribution of Rs.4,200/-, which is arbitrary and unsustainable.

10) The learned counsel also submitted that the Tribunal failed to appreciate the gravity of the injuries sustained and the multiple surgeries undergone by the deceased. It was contended that the alleged non-wearing of helmet by the deceased is insignificant and irrelevant to the cause of the accident, which occurred solely due to the rash and negligent driving of the offending vehicle. Hence, fixing 25% contributory negligence on the deceased is unjustified. According to him, the Tribunal ought to have awarded the entire claim amount, and the reduction is legally unsustainable.

11) We have carefully considered the rival submissions made by the learned counsel on either side and perused the materials available on record.

12) The principal contention of the learned counsel for the appellant is that the compensation awarded by the Claims Tribunal is excessive. From the materials on record, it is evident that the deceased sustained grievous injuries, including severe head injuries and multiple fractures, which ultimately resulted in his death on 24.11.2018. It is also not in dispute that the deceased was continuously hospitalized from the date of accident and underwent prolonged medical treatment, including three major surgeries. Therefore, this Court is of the considered view that the death of the deceased is directly attributable to the injuries sustained in the accident and not due to any intervening cause. Hence, the compensation awarded by the Tribunal under the head of medical expenses is just and reasonable and does not warrant interference.

13) With regard to the finding of contributory negligence, this Court finds that the same is well founded and supported by evidence on record. During the course of cross-examination of P.W.1, who is the mother of the deceased, she has categorically admitted that the deceased did not possess a valid driving licence at the time of the accident. She has further admitted that the motorcycle involved in the accident was not supported by a Registration Certificate and that the deceased was not wearing a helmet at the time of occurrence. In addition, Ex.A4 – Motor Vehicle Inspector's Report clearly records that the Driving Licence, Registration Certificate and Insurance Policy relating to the motorcycle were not produced at the time of inspection.

14) The aforesaid admissions and documentary evidence clearly establish

violation of the mandatory provisions of the Motor Vehicles Act, 1988, on the part of the deceased. Though the accident was primarily caused due to the rash and negligent driving of the offending Eicher Van, the lapses on the part of the deceased, particularly the non-wearing of helmet, had a direct nexus with the grievous head injuries sustained by him, which ultimately culminated in his death. Therefore, this Court is of the considered view that the finding of the Tribunal fixing 25% contributory negligence on the deceased is just, reasonable and based on cogent evidence, and does not call for any interference.

15) However, the contention of the learned counsel for the appellant regarding the award of Rs.2,00,000/- towards pain and suffering merits acceptance. This Court, in *The Branch Manager, Oriental Insurance Co. Ltd. v. Manohar (Deceased) & Others* and *National Insurance Co. Ltd. v. Sivabakkiyam (Deceased) & Others*, has consistently held that claims towards pain, suffering and personal injuries do not survive upon the death of the injured. Hence, the award under the said head is liable to be set aside.

16) In view of the above discussion, the award passed by the Tribunal stands modified to the extent indicated above. The Compensation allowed by this Court in comparison with the previously awarded compensation by the Claims Tribunal:

S.No.

Title of the Heads

Compensation awarded by the Tribunal (in Rupees)

Compensation awarded by this Court (in Rupees)

Amount Confirmed/ Awarded/ Enhanced/ Reduced

1.

Loss of Income (Rs.6000+40%-

$\frac{1}{2}\% \times 12 \times 18$)

Rs.9,07,200/-

Rs.9,07,200/-

Confirmed

2.

Funeral Bills

Rs.15,000/-

Rs.15,000/-

Confirmed

3.

Loss of property

Rs.15,000/-

Rs.15,000/-

Confirmed

4.

Medical Bills

Rs.20,54,496/-

Rs.20,54,496/-

Confirmed

5.

Filial Consortium

Rs.40,000/-

Rs.40,000/-

Confirmed

6.

Pain and

Sufferings

Rs.2,00,000/-

-----Nil-----

Deducted

7.

Attender's Charges

Rs.66,000/-

Rs.66,000/-

Confirmed

8.

Transportation Charges

Rs.10,000/-

Rs.10,000/-

Confirmed

Total

Rs.33,57,696/-

Rs.31,57,696/-

Reduced

Amount deducted towards the contributory negligence of the deceased 25%

Rs.8,39,424/-

Rs.7,89,424/-

Reduced

Total Compensation granted in favor of the 1st respondent

Rs.25,18,272/-

Rs.23,68,272/-

Reduced

17) Accordingly, the Civil Miscellaneous Appeal is partly allowed, and the award dated 29.04.2021 is modified as stated supra. Consequently, cross objection filed by the claimant is rejected. The connected miscellaneous petitions is closed. There shall be no order as to costs.