

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS. OF 2025
[ARISING FROM SLP(C) NOS.833-834 OF 2023]**

M. NITHYA & ORS.

...APPELLANT(S)

VERSUS

**SBI GENERAL
INSURANCE COMPANY
LIMITED**

...RESPONDENT(S)

ORDER

1. Leave granted.
2. The Appellants before us are the legal heirs of the late Meganathan who died due to a motor accident. They are assailing order dated 28.02.2022 passed by the High Court of Madras in C.M.A.Nos.1588 and 887 of 2021 whereby the High Court has reduced the compensation awarded to them by the Motor Accidents Claims Tribunal, Tiruvallur in M.C.O.P.

No.501 of 2016 vide order dated 29.10.2020, for the death of Meganathan.

3. The facts to the relevant extent are such, that, on 02.11.2015, around 8:20 PM, the deceased was riding a two-wheeler, when a lorry moving in the same direction ahead of the two wheeler in a rash and negligent manner in high speed, suddenly applied break resulting in the deceased hitting the backside of the lorry. Due to the impact suffered, the deceased suffered grievous injuries. He was admitted in the hospital, where he succumbed to his injuries on the same day. The legal heirs of the deceased filed M.C.O.P No.501 of 2016 seeking compensation of Rs.1,08,25,000/- which was restricted to Rs.90,63,000/-. The deceased was 38 years at the time of the accident and working as Deputy Manager in Mahindra Logistic and earning Rs.42,000/- per month. The Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the lorry and directed the Insurance Company to pay a compensation of Rs.72,20,000/- with interest at 7.5% per annum from the date of numbering of the petition i.e 29.07.2016 till the date of deposit, to the

legal heirs of the deceased. The Insurance Company aggrieved by the order, filed C.M.A No.1588 of 2021 and the Appellant filed C.M.A No.887 of 2021 before the High Court. On 28.02.2022 vide a common order, the High Court partly allowed the appeal filed by the Insurance Company by reducing the compensation by a sum of Rs.34,25,000/- bringing the total sum awarded to Rs.37,94,500/- and dismissed the appeal filed by the Appellants herein.

4. We have heard learned counsel for the parties.
5. The Tribunal had concluded that the accident took place only due to the negligence of the driver of the lorry. The Insurance Company in their Counter before the Tribunal had stated that the deceased rode the motorcycle without wearing a helmet and was riding rashly behind the lorry and thereby contributed to the accident and hence, contributory negligence has to be determined. The Tribunal considered the Final Report that showed that the driver of the lorry was charged for offences under Section 279 and 304(A) IPC. The Motor Vehicle Inspection Reports made it clear that the lorry and

motorcycle were involved in the accident. Therefore, the Tribunal rejected the argument of the Insurance Company that the deceased contributed to the accident. Hence, it was determined by the Tribunal that the owner of the lorry and the Insurance Company are jointly and severally liable to pay the compensation to the claimants.

6. The High Court, on the other hand, observed that the driver of the lorry drove the vehicle at a normal speed and if he had given indication while stopping the vehicle, he would have averted the accident. The High Court was of the view that though there was negligence on the part of the driver of the lorry, the deceased could have avoided the accident by being vigilant and maintaining proper distance from the lorry. Therefore, it was held that there was contributory negligence on the part of the driver of the lorry plus the deceased and fixed the liability to be 60% on the part of the driver of the lorry and 40% on part of the deceased. The High Court recalculated the compensation payable to the claimants and awarded a reduced amount of Rs.37,94,500/- as compensation.

7. It is pertinent to observe that the Tribunal noted that the Insurance Company in their Counter contend that contributory negligence of the part of the deceased has to be fixed. However, the Tribunal did not frame any specific issue in that regard for determination. The Tribunal clearly finds negligence only on part of the driver of the lorry and therefore, the owner of the lorry and the Insurance Company which insured the said lorry are jointly and severally found liable to pay compensation. Therefore, when the Tribunal did not even frame an issue on contributory negligence, the High Court ought not to have considered that argument in order to reduce the compensation awarded. Even otherwise the Insurance Company did not lead any evidence on this aspect nor insisted for framing an issue. Merely making a bald assertion in their Counter Affidavit cannot derive any advantage. Hence, we are in agreement with the findings of the Tribunal that the accident took place only due to the negligence of the driver of the lorry and therefore, the contributory negligence awarded on part of the deceased by the

High Court suffers from an error and cannot be sustained.

8. In view of the above, the appeals are allowed. The impugned order of the High Court dated 28.02.2022 is set aside and that of the Tribunal dated 29.10.2020 is restored.
9. Pending application(s), if any, shall stand disposed of.

.....,J.
(VIKRAM NATH)

.....,J.
(PRASANNA B. VARALE)

NEW DELHI;
JANUARY 03, 2025.