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CMA NO.740 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CMA NO.740 OF 2022

1.Anaimuthu

2.Lakshmi

3.Akila

4.Anitha

... Appellants /
Petitioners

Vs.

1.P.Sangeetha

2.M/s.Cholamandalam General Insurance Co. Ltd.,
Rajaji Road, Near Lakshmi Vilas Bus Stop,
Salem – 7.

... Respondents /
Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 10.02.2020 made in M.C.O.P.No.169 of 2018 on the file of MACT / Special District Court, Salem.



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For Appellants : Mr.Ma.P.Thangavel
For Respondent-1 : Served – No appearance
For Respondent-2 : Mrs.R.Sree Vidhya

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The claimants who are the parents and sisters of the deceased Anandhakumar, who died in a motor accident that occurred on 06.12.2017 are on appeal aggrieved by the quantum of compensation awarded at Rs.23,43,360/-.

2.According to the claimants, while the deceased was riding his motorcycle bearing Registration No.TN54-Y-2832 on the Namakkal to Tiruchengode Road, he has taken a 'U' turn on the highway and reached the extreme left side of the Tiruchengode to Namakkal Road, a Car bearing Registration No.TN28-AJ-0005 which was going towards Namakkal came



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from behind and hit against the motorcycle. As a result of the accident, the deceased sustained grievous injuries and died on 08.12.2017. Terming the negligence on the part of the Driver of the Car as the cause of the accident and drawing support from the fact that the FIR was registered against the driver of the Car in Crime No.1054 of 2017, the claimants sought for compensation from the insurer of the Car. The claim of Rs.2,00,00,000/- as compensation was sought to be supported by contending that the deceased was working as a Manager in Kotak Mahindra Bank Ltd., Namakkal and was earning a sum of Rs.60,000/- per month as salary. It was also contended that the parents and the unmarried sisters of the deceased were wholly depending on the deceased for their sustenance.

3.The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested by the claimants. It was the contention of the Insurance Company that the deceased had invited the



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accident by taking a sudden 'U' turn on the National Highway without looking for the oncoming vehicles. His age and salary particulars were denied. The claimants were put to strict proof of the quantum of compensation claimed.

4.At trial before the Tribunal, the second claimant – mother of the deceased was examined as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3. No oral evidence was let in on the side of the insurance company. Ex-P.1 to Ex-P.25 were marked on the side of the claimants and the pay slip of the deceased was marked as Ex-X.1. The Authorization Letter and the Investigation Report were marked as Ex-R.1 and Ex-R.2.

5.On the available evidence, the Tribunal concluded that the accident occurred due to the negligence of the Driver of both the vehicles.



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It came to the conclusion that the rider of the two wheeler / deceased has also contributed to the accident relying upon the oral evidence of the eye witness, namely P.W.2. The Tribunal quantified the percentage of contribution at 15. On the quantum, the Tribunal took the monthly income at Rs.21,000/- on the basis of Ex-X.1. It applied future prospects at 50%, deducted 50% towards personal expenses and arrived at the monthly loss of dependency at Rs.15,750/-. It adopted a multiplier of 16 and arrived at the total loss of dependency at Rs.30,24,000/-. The Tribunal further deducted 10% towards personal and living expenses of the deceased and arrived at the entitlement of the claimants at Rs.27,21,600/- under the head 'loss of dependency'. The Tribunal awarded a sum of Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. It also deducted 15% for contributory negligence and arrived at the total compensation at Rs.23,43,360/-. The Insurance Company accepted the award. The claimants are on appeal seeking enhancement.



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6.We have heard Mr.Ma.P.Thangavel, learned counsel appearing for the appellants and Mrs.R.Sree Vidhya, learned counsel appearing for the respondent – Insurance Company.

7.The owner of the Car though served is not appearing either in person or through counsel duly instructed.

8.Mr.Ma.P.Thangavel, learned counsel for the appellants would vehemently contend that the Tribunal erred in determining the monthly income at Rs.21,000/-. Drawing our attention to the salary certificate namely Ex-X.1, the learned counsel would submit that the deceased was drawing a sum of Rs.48,970/-. The Tribunal erred in taking only the basic salary i.e., Rs.21,000/-. Learned counsel would also fault the Tribunal for having deducted 60% (50% + 10%) towards personal and living expenses of the deceased. Since the deceased was a Bachelor, the



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deduction as suggested by the Hon'ble Supreme Court in *Sarla Verma &*

Ors. Vs. Delhi Transport Corporation & Another reported in (2009) 6

SCC 121 could be only upto a maximum of 50% and not above. The

learned counsel would also fault the Tribunal for having deducted 15%

towards contributory negligence. Heavily relying upon Ex-P.15 and Ex-

P.16, the learned counsel would submit that the Tribunal has misread the

evidence of P.W.2, the eye witness and come to the conclusion that the

deceased has also contributed to the accident. Learned counsel would also

submit that the Tribunal erred in not awarding any amount towards loss of

love and affection to the parents namely the appellants 1 and 2. Therefore,

according to the learned counsel, the quantum of compensation awarded

by the Tribunal needs to be enhanced.

9.Contending contra, Mrs.R.Sree Vidhya, learned counsel
appearing for the second respondent / Insurance Company would submit



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that the other allowances which are part of the salary cannot be brought under the head of 'loss of dependency' and therefore, the Tribunal was right in taking the basic salary only. She would also contend that the Tribunal ought to have deducted a certain percentage towards income tax since the income is assessed more than the taxable limit. The learned counsel would also submit that on the evidence of P.W.2, the conclusion of the Tribunal in fixing contributory negligence at 15% is justified.

10. We have considered the rival submissions.

11. Since the Insurance Company has accepted the award, we will have to decide the question of contributory negligence first.

12. The Tribunal has come to the conclusion that the deceased has contributed to the accident based on the evidence of P.W.2. We have



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been taken through the evidence of P.W.2, the rough sketch and the Motor Vehicle Report of the Car. From the rough sketch, we find that the accident has occurred on the extreme left side of the west to east Tiruchengode to Namakkal Road. From the evidence available, it is seen that the two wheeler had taken a 'U' turn in a permitted 'U' turn spot on the National Highway and has almost gone to the extreme left of the other side of the road. The Car has come from behind and hit the two wheeler. The damages that are caused to the Car are on the front left side of the Car. The nature of the damages that have been noted in the Motor Vehicles Report namely breakage of front windscreen glass, front left rear view mirror, headlight, foglamp and front left side bumper would show that the Car has hit the two wheeler at its left side and the spot where the accident took place is shown on the extreme left side of the road in Ex-P.16, the rough sketch.

13.A cumulative effect of these two documents would show that the two wheeler had taken a 'U' turn and had crossed the entire road



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and reached the extreme left side of the road. As the two wheeler had taken a 'U' turn, it could not have travelled at a high speed. Therefore, unless the Car driver had travelled at a breakneck speed, the accident could have been avoided very easily. We find that the Tribunal has read the evidence of P.W.2 to the exclusion of the documentary evidence which had lead to the Tribunal reaching the wrong conclusion.

14.Even in his evidence, P.W.2 has not said that the deceased took a sudden 'U' turn. P.W.2 had very specifically stated in his cross examination that the deceased had taken a 'U' turn in an admitted portion and has almost crossed the road. The relevant portion of the evidence of P.W.2 is as follows:

“ இருசக்கர வாகனத்தில் வந்தவர் தெற்கிலிருந்து வடக்கு நோக்கி ரோட்டை கடந்துவிட்டார். அவர் மீது மோதிய ஸ்கோடா கார் 50 அடி தூரத்தில் வந்து கொண்டிருந்தது. காரில் வந்த நபர் இருசக்கர வாகனம் குறுக்கே வரும் என்று எதிர்பார்க்கவில்லை. ரோட்டை கடக்கும்போது அவருக்கு இடது புறமாக தான் ஸ்கோடா கார் வந்தது...”



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14.1. In his chief examination, he has explained the manner of accident as follows:

“...அப்பொழுது சுமார் 30 வயது மதிக்கத்தக்க நபர் இருசக்கர வாகனம் பதிவு எண். TN-54-Y-2832 என்ற வாகனத்தில் தலைக்கவசம் அணிந்துக்கொண்டு ரோட்டின் இடது புற ஓரமாக சாலைவிதிகளை அனுசரித்து நாமக்கல் to திருச்செங்கோடு ரோட்டில் பதிநகர் பிரிவு ரோட்டின் அருகில் அனுமதிக்கப்பட்ட இடத்தில் ரோட்டை தெற்கிலிருந்து வடக்கு நோக்கி கிராஸ் செய்து நாமக்கல் பக்கம் திரும்பி சென்ற பொழுது திருச்செங்கோடு பக்கமாக இருந்து நாமக்கல்லை நோக்கி வந்த ஸ்கோடா கார் பதிவு எண். TN-28-AJ-0005 என்ற காரினை அதன் ஓட்டுனர் அதிவேகமாகவும், அஜாக்கிரதையாகவும், ஆரன் அடிக்காமலும், ஓட்டி வந்து மேற்படி நபர் ஓட்டிச்சென்ற இருசக்கர வாகனத்தின் மீது பலமாக மோதியதில் மேற்படி நபர் தூக்கி எறியப்பட்டு கீழே விழுந்துவிட்டார்...”

15. The above evidence, in our opinion, does not suggest that the two wheeler rider took a sudden 'U' turn, taking the Car driver by surprise. A combined effect of the evidence of P.W.2, the Motor Vehicles Report Ex-P.15 and rough sketch Ex-P.16 would show that the two wheeler



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rider was on the extreme left side of the road and it was the Car driver, who was driving the Car at great speed and could not avoid the accident due to the speed. We are therefore unable to sustain the finding of the Tribunal that the two wheeler rider/deceased has contributed to the accident. Hence, the deduction of 15% towards contributory negligence is set aside.

16.On the quantum, we find that the Tribunal has grievously erred in taking only the basic salary. As per Ex-X.1, the salary certificate, we find that the deceased was drawing a monthly gross salary of Rs.48,970/- which consists of the following:

<i>Particulars</i>	<i>Monthly Rate</i>	<i>Current Month</i>	<i>Total</i>	
Basic	21000.00	21000.00	0.00	21000.00
Monthly Rent Allowance	10500.00	10500.00	0.00	10500.00
Transport Allowance	1600.00	1600.00	0.00	1600.00
Professional Allowance	11620.00	11620.00	0.00	11620.00
Medical Reimbursement	1250.00	1250.00	0.00	1250.00
Advance Against LTA	3000.00	3000.00	0.00	3000.00
Gross Earnings				48970.00



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17.As rightly contended by Mr.Ma.P.Thangavel, the Tribunal erred in not taking into account the HRA and the Professional Allowance. Even if we are exclude a sum of Rs.1,600/- paid as Transport Allowance, Rs.1,250/- paid as Medical reimbursement and Rs.3,000/- paid as advance against LTA, the salary drawn by the deceased would be Rs.43,120/-. Therefore, the Tribunal was wrong in fixing only Rs.21,000/- towards monthly income. We take the monthly income at Rs.43,000/- as a round figure.

18.The Tribunal has adopted future prospects at 50%. The deceased was not working in any Government organisation or in a permanent job. He was a Manager at a private Bank. Hence, para 59.4 of the judgment of the Hon'ble Supreme Court in *National Insurance Company Limited vs. Pranay Sethi & Ors* reported in (2017) 16 SCC 680 would apply to the facts and circumstances of this case. Hence, we take the



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future prospects at 40%. Thus, the monthly income would be Rs.60,200/-.

The annual income would be Rs.7,22,400/- (Rs.60,200/- X 12= Rs.7,22,400/-). The income tax slab for the income of Rs.7,22,400/- is 20%. Therefore, if we are to deduct 20% from the annual income, the annual income after tax would be Rs.5,77,920/-. Since the age of the deceased has been fixed as 32, the multiplier applicable would be 16. Therefore, the total loss of income would be Rs.92,46,720/-. Since the claimant died as a Bachelor, we will have to deduct 50% towards his personal and living expenses. Therefore, the total loss of dependency for the claimants would be Rs.46,23,360/-. If we add conventional damages, namely loss of love and affection at Rs.40,000/- each to the parents i.e., Rs.80,000/- and Rs.15,000/- each towards loss of estate and funeral expenses, the total compensation worked out to Rs.47,33,360/-. We round it off to **Rs.47,33,000/- (Rupees Forty Seven Lakh Thirty Three Thousand Only).**



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19. In fine, the appeal is partly allowed and the compensation fixed by the Tribunal is enhanced to **Rs.47,33,000/- (Rupees Forty Seven Lakh Thirty Three Thousand Only)**. The interest awarded by the Tribunal is confirmed. The parents will take the enhanced award amount equally. The Insurance Company has already deposited monies as per the award of the Tribunal. The Insurance Company will have eight weeks time from the date of receipt of a copy of this judgment to deposit the enhanced amount as per our judgment. There shall be no order as to costs.

[R.S.M., J.]

[R.S.V., J.]

12.07.2024

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Speaking Order
TK

To
The Motor Accidents Claims Tribunal /
Special District Court
Salem.



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