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C.M.A.No. 1303 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.No. 1303 of 2023

1.Manimegalai

2.Minor. Harish Murugan

...Appellants

Vs.

1.Shanthi

2.Sakthivel

3.Haripradhap

4.Senthilkumar

5.Sri Ram General Insurance Co. Ltd.,
1st Floor, Sachin Plaza, Alagapuram,
Saradha College Main Road,
Alagapuram, Salem - 636 016.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award passed in MCOP.No. 1111 of 2021 on the file of the Special District Judge, MCOP Tribunal, Salem dated 15.12.2022.



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For Appellants : Ms.J.Prithivi
For Respondents : Mr.Sanjay for
Mr.P.Jagadeesan for R1 & R2
Mrs.V.Pushpa for R5
R4 - Exparte vide JR (AS)
R3 - Out of station

J U D G M E N T

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

The claimants are on appeal seeking enhancement of the compensation awarded by the Tribunal for the death of one Karthikeyan in a road accident that happened on 22.10.2020 at about 02.00 a.m.

2.The claimants sought for a compensation at Rs.68,50,000/- contending that on the fateful day, Puthiragoundampalayam over bridge, when the deceased was driving his car in Attur to Valapadi road at around 02.00 a.m. on Puthiragoundampalayam over bridge, a lorry bearing Registration No. TN-52-H-1618 which was going ahead of him, driven in a rash and negligent manner, suddenly stopped in the middle of the road without any signal whatsoever. The deceased, who was following the lorry



could not avoid hitting the lorry and crashed into the lorry from behind on the left side of the lorry. As a result of the accident, he suffered multiple injuries and died on the spot. His friend, P.W.2 who was following him on his motor cycle informed the 1st petitioner of the accident and also lodged a complaint to that effect. Terming negligence on the part of the driver of the lorry as the cause for the accident and contending that the deceased was a businessman earning about Rs.35,000/- per month, the claimants, who are the wife and son of the deceased sought for a compensation of Rs.65,00,000/-. The parents of the deceased were shown as respondents 1 & 2 in the original petition.

3. The claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimants. It was also claimed that the deceased himself contributed to the accident because of his own rash and negligent driving. It would contend that if only the deceased had maintained a safe distance from the lorry, he would have avoided the accident. It was also contended that the testimony of P.W.2 is interested testimony and therefore, it cannot be taken on its face value.

4. At trial, before the Tribunal, the 1st claimant / wife of the deceased



was examined as P.W.1 and an eye-witness, Mr.Naveethbasha was examined as P.W.2. Exs.P1 to P19 were marked. The Insurance Company did not let in any evidence. Driving license of P.W.2 was marked as Ex.X1. On a consideration of the material available, the Tribunal came to the conclusion that the accident occurred due to the negligence of both the drivers. The Tribunal however, apportioned the negligence on the part of the deceased at 60%, and on the lorry driver at 40%.

5. On the quantum, the Tribunal took the monthly income of the deceased at Rs.12,000/-. It applied future prospects at 40% and arrived at the monthly income of Rs.16,800/-. It deducted 1/4 towards personal and living expenses, applied multiplier of 17 and arrived at the total loss of dependency at Rs.25,70,400/-. It awarded loss of consortium for the wife at Rs.50,000/- and Rs.20,000/- each towards funeral expenses and loss of estate. Thus, the total compensation arrived at Rs.26,60,400/-. The Tribunal deducted 60% towards contributory negligence and compensation payable by the Insurance Company was determined at Rs.10,64,160/-. Aggrieved, the claimants are on appeal.

6. We have heard Ms.J.Prithivi, learned counsel for the appellants, Mr.Sanjay, learned counsel for the R1 & R2 / parents of the deceased and

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Ms.V.Pushpa, learned counsel for the 5th respondent. The 4th respondent has been served and has been set exparte. The 3rd respondent / owner of the car has not been served. Since the liability is not disputed and as the deceased was the driver of the car, either owner or the Insurer of the car can be made liable for payment of compensation. Hence, we do not see any need for hearing the 3rd respondent.

7. Ms.J.Prithivi, learned counsel for the appellants would vehemently contend that the Tribunal was not right in assuming contributory negligence on the part of the driver of the car. She would draw our attention to the evidence of P.W.2, an eye-witness, who has deposed regarding the manner of the accident. The manner of the accident has been described by P.W.2 in his proof affidavit as follows:-

"பிறகு கார்த்திகேயன் அவர் வந்த காரிலும், நான் என்னுடைய இரு சக்கர வாகனத்திலும் சரியான கவனத்துடன் மிதமான வேகத்தில் ஆத்தூரிலிருந்து வாழப்பாடி வந்து கொண்டிருந்தோம். அப்போது புத்திரகவுண்டம்பாளையம் மேம்பாலத்தில் வந்து கொண்டிருந்தபோது TN-52-H-1618 என்ற கன ரக லாரியானது ஒரே நேராக செல்லாமல் வேகமாக சென்று கொண்டிருந்தது. அந்த லாரிக்குப் பின்னால் கார்த்திகேயன் போதிய இடைவெளிவிட்டு காரை



மிதமான வேகத்தில் ஓட்டிச் சென்று கொண்டிருந்தார். நான் கார்த்திகேயன் ஓட்டி சென்ற காருக்குப் பின்னால் போதிய இடைவெளி விட்டு சென்று கொண்டிருந்தேன். அப்போது காலை சுமார் 2.00 மணியளவில் திடீரென லாரி ஓட்டுநர் லாரியின் பிரேக்கைப் போட்டுவிட்டார். அதனால் லாரிக்குப் பின்னால் சென்ற கார்த்திகேயனின் கார் மேற்படி லாரிக்குப் பின்னால் சென்று மோதிவிட்டது. உடனே நான் எனது இரு சக்கர வாகனத்தை நிறுத்திவிட்டு சென்று பார்த்த போது காரின் முன்பக்கம் நசுங்கியிருந்தது கார்த்திகேயனுக்கு பலத்த படுகாயம் ஏற்பட்டிருந்தது. அவர் முச்சுப் பேச்சில்லாமல் இருந்தார். பிறகு நான் இது பற்றி அவரது மனைவி மணிமேகலைக்கு தகவல் தெரிவித்தேன்."

8. The said witness was cross-examined by the learned counsel for the Insurance Company and the cross-examination reads as follows:-

"மனுதாரர்களை ஏற்கனவே எனக்கு தெரியும். போலீசில் நான் புகார் கொடுக்கவில்லை. இறந்து போனவர் வைக்கவிருந்த தேங்காய் கடையில் நான் பங்குதாரராக இருக்க முடிவு செய்யவில்லை. எங்கள் வீட்டிற்கும் சம்பவ இடத்திற்கும் சுமார் அரை கி.மீ தூரமிருக்கும். நான் தனியாக இருசக்கர வாகனத்தில் சென்றதாக பொய் சொல்கிறேன் என்றால் சரியல்ல. அதனால்தான் நான் புகார் கொடுக்கவில்லை என்றால் சரியல்ல. விபத்து நடந்த நேரம் இரவு 01.00 மணி.



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சம்பவ இடம் இருட்டாக இருந்தது. எனக்கு முன்பாக 10 மீட்டர் இடைவெளியில் லாரி சென்றுகொண்டிருந்தது. இருட்டாக இருந்ததால் முன்னால் சென்றுகொண்டிருந்த லாரியை என்னால் கவனிதிருக்க முடியாது என்றால் சரியல்ல. மனுதாரர்கள் கேட்டுக்கொண்டதற்கிணங்க முன்னால் சென்றுகொண்டிருந்த லாரி திடீரென பிரேக் போட்டதாக பொய் சொல்கிறேன் என்றால் சரியல்ல. நான் விபத்தை நேரில் பார்க்கவில்லை என்றால் சரியல்ல. மனுதாரர்களுக்கு ஆதரவாக பார்க்காத சம்பவத்தை பார்த்ததாக பொய் சாட்சி சொல்கிறேன் என்றால் சரியல்ல."

9. The Insurance Company has not let in evidence to show the manner of the accident. The driver of the lorry has not been examined. Even the cross-examination of P.W.2 by the counsel for the Insurance Company is far from satisfactory. There is not even a suggestion that the deceased did not maintain proper distance and the above extracted cross-examination shows that the cross-examining counsel has not even read the proof affidavit of P.W.2. Unfortunately, the Tribunal has not adverted to this evidence. It has gone only by the Motor Vehicle Report of the car and the lorry and come to the conclusion that the driver of the car had contributed to the accident because of his own negligence.



10. In the light of the above evidence that has been placed before us, we are unable to sustain the said finding of the Tribunal. No doubt, the car has rammed behind the lorry but, it is the case of the claimants as well as the evidence of P.W.2 that the car driver rammed against the lorry because the lorry stopped suddenly. In the cross-examination of P.W.2, which has been extracted above, there is not even a suggestion that the lorry did not stopped and the car attempted to overtake the lorry on the left as suggested by the learned counsel for the Insurance Company before us. We cannot allow the learned counsel for the Insurance Company to lead evidence in an appeal. Evidence ought to have been let in before the Trial Court and the said evidence should be by competent persons and not by the counsel for the Insurance Company.

11. We therefore, find that the Tribunal had grievously erred in concluding that the car driver was responsible for the accident and he has been contributed to the accident to the extant of 60%. From the evidence of P.W.2, we find that at best, the contributory negligence on the part of the car driver can be put at 25% and nothing more.



12. We find tht the Tribunal has also adopted Rs.12,000/- as notional income. Of course, there is no evidence to show the exact income of the deceased. However, he has shown to be an acting driver, his driving license has also been produced. Hence, we fix the monthly income at Rs.15,000/-. If we adopt 40% increase towards future prospects, monthly income will be Rs.21,000/-. If we deduct 1/4 towards personal expenses, the monthly income would be Rs.15,750/-. If we adopt multiplier of 17, the loss of dependency would be Rs.32,13,000/-.

13. On the quantum of compensation under the conventional heads, we find that the deceased had left behind wife, minor child and parents. The Tribunal has awarded only Rs.50,000/- towards loss of consortium which is not in tune with the judgment of Hon'ble Supreme Court *National Insurance Company Ltd., Vs. Pranay Sethi and Others* reported in (2017) 16 SCC 680. Therefore, the award on the head of loss of consortium namely, parental consortium, filial consortium and spousal consortium at Rs.40,000/- each would be Rs.1,60,000/- instead of Rs.50,000/- awarded by the Tribunal. The award for funeral expenses and loss of estate are sustained. Therefore, the total compensation is re-worked as follows:-

<i>S.No.</i>	<i>Description</i>	<i>Amount</i>
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1	Loss of dependency	Rs.32,13,000/-
2	Loss of consortium (For the wife, child and the parents at Rs.40,000/-each)	Rs.1,60,000/-
3	Funeral Expenses	Rs.20,000/-
4	Loss of estate	Rs.20,000/-
Total		Rs.34,13,000/-

14. We have held that the deceased has contributed to the accident and we have fixed the percentage of contribution at 25% therefore, the claimants would only be entitled to 75% of the compensation fixed as above. Thus, the total compensation worked to Rs.25,59,750/-. The interest awarded by the Tribunal is confirmed.

15. The compensation awarded is apportioned as follows:-

i) The 1st petitioner / wife would be entitled to Rs.10,00,000/- with proportionate interest.

ii) the 2nd petitioner / son will be entitled to Rs.10,00,000/- with proportionate interest.

iii) The respondents 1 & 2 / the parents would together be entitled to



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Rs.5,59,750/- with proportionate interest.

iv) The share of the minor claimant shall be kept in interest accruing fixed deposit in any of the National Bank till he attains majority.

16. The Insurance Company is directed to deposit the award amount within a period of twelve weeks from the date of receipt of a copy of this order. Upon such deposit, the major claimants are permitted to withdraw their share.

17. In fine, this Civil Miscellaneous Appeal is **allowed**. No costs.

(R.S.M., J.) (R.S.V., J.)
26.07.2024

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R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

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To:-

The Motor Accident Claims Tribunal,
Special District Court,
Salem.

C.M.A.No. 1303 of 2023

26.07.2024