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Civil Miscellaneous Appeal No.1045 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1045 of 2024

1. Maruthamuthu

2. Asoke

... Appellants

Vs.

1. Dhinesh

2. M/s.Shriram General Insurance Co Ltd.

C-142, 1st Floor, Jayashri Tower's,

6th Cross, Thillai Nagar,

Trichy – 620 018

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and award of the Motor Accident Claims Tribunal (Principal District Court), Perambalur in MCOP No.68 of 2020 dated 10.10.2022.

For Appellant : P.Parthikannan

For Respondents : M/s.N.Sakthivel for R1
M/s.R.Sree Vidhya for R2



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JUDGMENT

The claimants not being satisfied with the contributory negligence of 50% attributed against the rider of the two wheeler has filed this appeal against the award passed by Motor Accident claim Tribunal (Principal District Court), Perambalur in M.C.O.P.No.68 of 2020 dated 26.10.2022.

2. The claimants are the husband and son of the deceased Rasathi. On 05.10.2019, the 2nd claimant, who is the son of the deceased was riding the two wheeler in which the deceased was traveling as a pillion rider. The two wheeler was proceeding in Ariyalur to Kallankurichi main road and when it was going near Ayikuttai at about 9.00 a.m, the offending vehicle belonging to the 1st respondent was driven in a rash and negligent manner and this vehicle had caused a slight impact on the two wheeler, which was going in the front. As a result of which, the rider of the two wheeler lost his balance and fell down and the pillion rider suffered grievous injuries. As a result of which, she succumbed to the injuries on 09.10.2019. An FIR was registered in Crime No.139 of 2019



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on 06.10.2019, based on the complaint given by the 2nd claimant. It is under these circumstances, the claim petition came be filed before the Tribunal seeking for payment of compensation.

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of evidence came to a conclusion that the accident had not taken place in the manner in which it was projected by PW1 and to arrive at this conclusion, the Tribunal took into consideration the report of the Motor Vehicle Inspector, which was marked as Ex.R2 and R3 and attributed 50% contributory negligence against the rider of the two wheeler and the 1st respondent was made liable only for 50% and consequently, the insurance company was vicariously made liable to pay the compensation only to an extent of 50%.

4. Having rendered the above finding, the Tribunal proceeded to fix the total compensation at Rs.20,03,112/- under various heads in the following manner :-



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Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Annual Income	=Rs.14,562/- + 3,641 (25% F.P) x 12 = =Rs.2,18,436/-
2.	After Deducting 1/3 rd	Rs.1,45,624/-
3.	Applying Multiplier 13	=Rs.1,45,624/- x 13 = =Rs.18,93,112/-
4.	Loss of Dependency	Rs.18,93,112/-
5.	Consortium Parental Consortium (1 x 40,000)	=Rs.40,000/- =Rs.40,000/-
6.	Loss of Estate Funeral Expenses	=Rs.15,000/- =Rs.15,000/-
	Total	=Rs.20,03,112/-
	(-) 50% of the contributory negligence on the part of the two wheeler rider / 2 nd petitioner	=Rs.10,01,556/-

From the above compensation, 50% was deducted and the balance 50% was directed to be paid with interest at the rate of 7.5% per annum.

5. The claimants aggrieved by the same, have filed the present appeal before this Court.



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6. Heard Mr.P.Parthikannan, learned counsel for appellants/claimants and M/s.N.Sakthivel, learned counsel for 1st respondent and M/s.R.Sreevidhya, learned counsel for 2nd respondent.

7. This Court carefully considered the submissions made on either side and the materials available on record.

8. This Court also carefully went through the award passed by the Tribunal.

9. In order to appreciate the finding of the Tribunal attributing 50% contributory negligence on the rider of the two wheeler, it will be necessary to go through the evidence of PW1, who was the rider of the vehicle. The relevant portion in the cross examination of PW1 is extracted hereunder :-

இருசக்கர வாகனத்தின் முன்பகுதியில் சிறுசேதம் ஏற்பட்டது. விபத்து நடந்த சாலை இரண்டு பேருந்துகள் போகும் அளவிற்கு அகலமான சாலை என்றால் சரிதான். என்னுடைய வாகனத்தை முந்திப்போன போது வேனின் பக்கவாட்டு கம்பி இடித்துவிட்டது. எதிர்புறத்தில் எந்த வாகனமும் வரவில்லை. நான் தான் கவனக்குறைவாகப்போய் அந்த வாகனத்தில் பின்புறத்தில்



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மோதிக்கொண்டேன் என்றால் சரியல்ல. அந்த அதிர்ச்சியில் தான் என் தாயார் கீழே விழுந்துவிட்டார் என்றும், விபத்திற்கு நான் காரணம் என்றும் சொன்னால் சரியல்ல.

10. It is also relevant to take notice of the allegations made in the FIR, which was marked as Ex.P1 and the relevant portion is extracted hereunder:-

கடந்த 05.10.2019 ம் தேதி நானும் எனது அம்மா ராசாத்தியும் கல்லங்குறிச்சி கலியுக வரதராஜ பெருமாள் கோவிலுக்கு சாமி கும்பிடுவதற்காக எனது மாமா கல்யாணகுமாரின் Hero Honda Splendor Plus TN 61A 5668 வண்டியை எடுத்துக் கொண்டு நான் ஓட்ட எனது அம்மா ராசாத்தி பின்னால் உட்கார்ந்து கொண்டார். அரியலூர் to கல்லங்குறிச்சி சாலையில் காலை 9.30 மணியளவில் ஆயிக்குட்டை அருகே சாலையின் இடது புறமாக சென்ற கொண்டிருந்த போது அதே சாலையில் எங்களுக்கு பின்னால் பெயர் விலாசம் கேட்டுத் தெரிந்த திருச்சி மாவட்டம் பூவாளூர் மருதை மகன் கனகராஜ் என்பவர் TN 48 AS 0181 Mahindra pickup யை அதிவேகமாகவும் ஓட்டி வந்து எனது வண்டியை முந்தி செல்ல முயன்ற போது நான் ஓட்டிச் சென்ற வண்டியில் மோதியதால் நிலை தடுமாறி வண்டியிலிருந்து கீழே வீழ்ந்ததில் எனக்கு வலது கை மற்றும் வலது கால் முட்டியில் சிராயிப்பு காயமும் எனது அம்மாவுக்கு தலையில் பலத்த காயமும் முகம் மற்றும் இடது தோள்பட்டையில் சிராயிப்பு காயமும்



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ஏற்பட்டது. தகவல் தெரிந்து வந்த எனது அப்பா மருதமுத்து போக்குவண்டி பிடித்து எங்களை அரியலூர் அரசு மருத்துவமனையில் சேர்த்தார். நான் வெளிநோயாளியாக சிகிச்சை பெற்று கொண்டேன். இதில் அம்மாவுக்கு காயம் அதிகம் என்பதால் தஞ்சாவூர் மருத்துகல்லூரி மருத்துவமனைக்கு மேல் சிகிச்சைக்கு அனுப்பி வைக்கப்பட்டார். மருத்துவமனையில் சுயநினைவின்றி இருந்து வருகிறார்.

11. The Tribunal has come to a conclusion that the rider of the two wheeler would have contributed to the negligence only based on the fact that the report of the Motor Vehicles Inspector shows that there was no damage on the rear side of the two wheeler and the damage had taken place only in the front head light and the two indicators on the front side. That apart, there was no damage for the offending vehicle.

12. The contributory negligence cannot be attributed only based on the report of the Motor Vehicles Inspector. At the best, the report of the Motor Vehicles Inspector can only be a corroborative piece of evidence and for the purpose of attributing contributory negligence, there must be some substantial evidence which will be supported by the report of the



Motor Vehicle Inspector. Such substantive evidence could have been recorded if the driver of the offending vehicle had been examined on the side of the respondents. If the driver of the offending vehicle had spoken about the accident and the version given by him goes in line with the report of the Motor Vehicles Inspector, then there is some reason for attributing contributory negligence against the rider of the two wheeler. In the absence of such substantive evidence, contributory negligence cannot be attributed against the rider of the two wheeler only based on the report of the Motor Vehicle Inspector.

13. Appreciation of evidence in a motor vehicles case is merely based on common sense. The version given by PW1 with respect to the accident is almost consistent and what has been stated in the FIR has been reiterated in the cross examination of PW1. When a two wheeler is over taken by a four wheeler, it is not necessary that the four wheeler must physically hit the two wheeler, in order to cause the accident. It is enough if the four wheeler merely touches the two wheeler and that will result in the rider of the two wheeler lose the balance. Under such circumstances, there will be no damage on the side of the two wheeler



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and once the rider of the two wheeler lost his balance, thereafter, the manner in which he falls down and the damages that happens to the two wheeler will depend upon the facts of each case.

14. There is no dispute with regard to the fact that the offending vehicle was very much present in the scene of occurrence. The evidence of PW1 has not been discredited in the cross examination. The driver of the offending vehicle has not been examined on the side of the respondents. Therefore, this Court holds that contributory negligence cannot be attributed against the rider of the two wheeler merely based on the report of the Motor Vehicles Inspector. Hence, the finding rendered by the Tribunal attributing 50% contributory negligence against the rider of the two wheeler is liable to be interfered and accordingly, the same is hereby set-aside.

15. The compensation that has been fixed by the Tribunal under various heads is reasonable and it does not require the interference of this Court. However, it is seen that the Tribunal has only deducted 1/3 rd towards the personal expenses of the deceased. In the instant case, the



son was aged about 29 years and the husband was aged about 49 years and the Judgment of the Apex Court in **[Sarla Verma & others Vs. Delhi Transport Corporation & another]** reported in **2009 (2) TNMAC 1 SC**, which was subsequently confirmed in **[National Insurance Co. Ltd., Vs. Pranay Sethi and others]** reported in **2017 (2) TN MAC 609 (SC)** makes it clear as to when $\frac{1}{3}^{\text{rd}}$ can be deducted towards personal expenses. Those parameter will not apply to the facts of the present case. Therefore, the Tribunal ought to have deducted $\frac{1}{2}$ from the personal expenses of the deceased. Therefore, the compensation under the head of loss of dependency is calculated as follows :-

$$\begin{aligned}\text{Loss of Dependency} &= 14,562/- + 3,641/- (25\%) \times 12 \\ &= 2,18,436/- \times 13 - 1/2 \\ &= 14,19,834/-\end{aligned}$$

16. In the light of the above discussion, the compensation fixed by the Tribunal is modified in the following terms :-

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of Dependency	Rs.14,19,834/-



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<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
2.	Consortium Parental Consortium (1 x 40,000)	=Rs.40,000/- =Rs.40,000/-
3.	Loss of Estate Funeral Expenses	=Rs.15,000/- =Rs.15,000/-
	Total	=Rs.15,29,834 /-

17. The compensation awarded by the Tribunal at Rs10,01,556/- is enhanced to Rs.15,29,834/-. The second respondent insurance company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.5,28,278/- is concerned, the appellants/claimants will not be entitled for interest for the period of delay of 170 days as was ordered by this Court in C.M.P.No.26291 of 2023, dated 08.04.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is partly allowed in the



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above terms. No costs.

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Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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N.ANAND VENKATESH.,J

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To
Motor Accident Claims Tribunal (Principal District Court), Perambalur

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