

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.Nos.3991 of 2008 & 3992 of 2008
and
MP. No.1 of 2008

- 1.M.Mohan
- 2.M.Karthik
- 3.M.Kamal
- 4.M.Divakar

(4th appellant declared as major and father and next friend M.Mohan discharged from the guardianship vide court order dated 25.10.2019 made in CMA.Nos.3991 and 3992 of 2008 as per memo dated 25.10.2019)

.. Appellants in CMA.No.3991 of 2008/Claimants

Priyanka

(sole appellant declared as major and father and next friend G.Logasundar discharged from the guardianship vide court order dated 25.10.2019 made in CMA.Nos.3991 and 3992 of 2008 as per memo dated 25.10.2019)

.. Appellant in CMA.No.3992 of 2008/Claimants

vs.

1. M/s.Amson Agencies,
No.68, Purasaiwakkam,
No.12, Garden Complex,
Chennai - 7.

2. The New India Assurance Co. Limited,
Motor Third Party Claims Office,
No.45, Moore Street,
5th Floor,
Chennai - 1.

..Respondents 1 & 2 in CMA.No.3991 of 2008/
Respondents 1 & 2

1. M/s.Amson Agencies,
No.12, Garden Complex,
No.68, Purasaiwakkam,
Chennai - 7.
2. The Manager,
The New India Assurance Co. Limited,
No.45, Moore Street,
5th Floor,
Chennai - 1.

..Respondents 1 & 2 in CMA.No.3992 of 2008/
Respondents 1 & 2

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 14.02.2006 passed in MCOP.Nos.2011 of 2004 and 2012 of 2004 on the file of the Motor Accident Claims Tribunal / Chief Judge, Court of Small Causes, Chennai.

For Appellants : Mr.A.A.Venkatesan
(in both CMAs)

For Respondents : Mr.M.Krishnamoorthy for R2
(in both CMAs) No appearance for R1

COMMON JUDGMENT

The appellants are the claimants in MCOP.Nos.2011 of 2004 and 2012 of 2004 on the file of the Motor Accident Claims Tribunal / Chief Judge, Court of Small Causes, Chennai. They filed the claim petitions under Sections 166 and 142 of the Motor Vehicles Act and Rule 3 of MACT Rules seeking compensation for the death of one Thilagam and for the injuries sustained by one Priyanka in a road accident on 09.02.2004.

2. The case of the claimants in nutshell is as follows:

On 09.02.2004, at about 08.30 pm, the deceased Thilagam, injured Priyanka, one Padma (deceased in MCOP.No.5089 of 2004) and other persons were crossing the GNT road in front of Puzhal Prison and at that time, a speeding mini lorry bearing Registration No. TN 01 P 9707 came with a high speed and hit them, as a result of which, Thilagam and Padma died on the spot, while Priyanka sustained grievous injuries and was rushed to the Hospital.

3. According to the claimants, the rash and negligent driving of the driver of the mini lorry bearing Registration No. TN 01 P 9707 belonging to the first respondent was the cause of the accident and that since, the said vehicle was insured with

the New India Assurance Company, the owner and the insurer are jointly and severally liable to pay compensation.

4. The owner of the mini lorry remained absent before the Tribunal and therefore, he was set *exparte*. The second respondent / New India Assurance Company contested the claim petitions on all the grounds available to the insured. The learned Chief Judge, Court of Small Causes / Motor Accidents Claims Tribunal, Chennai after analysing the evidence on record, awarded a compensation of Rs.3,80,000/- together with interest at the rate of 7.5% per annum to the claimants in MCOP.No.2011 of 2004 and awarded a compensation of Rs.22,500/- together with interest at the rate of 7.5% per annum to the claimant in MCOP.No.2012 of 2004. However, the Tribunal deducted 25% of the compensation towards contributory negligence on the part of the deceased and the injured on the ground that they crossed the road unmindful of the vehicular traffic and invited the accident. Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeals.

5. Mr.A.A.Venkatesan, learned counsel appearing for the appellants / claimants contended that though the claimants have adduced sufficient evidence to show that the driver of the mini lorry was rash and negligent, the Tribunal without considering the same, had fixed 25% towards contributory negligence on the part of the deceased and the injured. His specific contention is that such an observation made by the Tribunal in the absence of evidence on the side of the respondents cannot be sustained in the light of the decisions in (i) National Insurance Co. Ltd., vs. R.Vimala and others reported in 2019 (1) TNMAC 672 (DB) and (ii) Sherfudeen vs. M.A.Hajees and Another reported in 2006 (3) TAC 641 (Mad.). His another contention is that the award passed by the Tribunal is also very meagre and the same is liable to be enhanced.

6. Per contra, Mr.M.Krishnamoorthy, learned counsel appearing for the second respondent contended that the Tribunal had awarded a just compensation to the claimants after considering all the aspects of the case and therefore, the same need not be disturbed at this stage. He also contended that since the accident took place on the National Highways, the contributory negligence fixed on the part of the deceased and the injured to the extent 25% by the Tribunal is perfectly in order.

7. A perusal of a copy of the First Information Report (Ex.P5) shows that the driver of the mini lorry was rash and negligent. Karthik (PW4) is the eyewitness to the occurrence. He was also crossing the road at the time of the accident. He had clearly deposed that the driver of the mini lorry drove the

vehicle rashly and negligently and hit the pedestrians who were crossing the road. Absolutely, there is no contra evidence on the side of the respondents to show that the deceased and injured crossed the road unmindful of the vehicles. It is not also the case of the respondents that the place where the injured and the deceased crossed the road is not meant for pedestrian crossing. In the absence of evidence, the Tribunal was wrong in fixing 25% of contributory negligence on the part of the deceased and the injured. In the decision of the Division Bench of this Court in National Insurance Co. Ltd., vs. R.Vimala and others (cited supra) relied on by the learned counsel appearing for the appellant / claimants, it has been held that without any basis, contributory negligence cannot be fixed on the part of the deceased and the injured, especially, when an eyewitness to the accident was examined. Paragraph No.15 of the said decision, is extracted hereunder:

" At this juncture, this Court opines that the finding of the Claims Tribunal in the Common Award to the effect that the Motorcycle Riders were contributorily negligent for the accident was without any basis and materials on record. In view of the fact that PW4 (Eyewitness) had in a crystalline fashion deposed that the accident in question had occurred because of the negligent driving of the Driver of the offending vehicle of the Ninth Respondent/First Respondent's Tata Vica Car and therefore, this Court to prevent an aberration of justice, sets aside the finding of the Tribunal on 10% Contributory Negligence on the part of the rider and three pillion Riders of the Motorcycle"

8. In the instant case also, the eyewitness account is very clear on the aspect of negligence of the driver of the offending vehicle and therefore the order passed by the Tribunal, fixing the contributory negligence on the part of the deceased and the injured is set aside. The second respondent / New India Assurance Company is liable to pay the entire compensation awarded by the Tribunal.

9. CMA.No.3991 of 2008: As far as the quantum of compensation is concerned, it is seen from the records that the deceased Thilagam was a fruit vendor, earning a sum of Rs.4,500/- per month and she was aged 42 years on the date of the accident. Since the accident took place in the year 2004, Rs.4,500/- is taken as notional monthly income of the deceased. As there are four dependents, 1/3rd of the income of the deceased is deducted towards her personal expenses. As per the decision laid down in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC), 25% should be added

towards future prospects of the deceased. Since the age of the deceased was 42 years on the date of the accident, the proper multiplier to be adopted in the instant case is 14 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.4,500/-

25% Future Prospects = Rs.1,125/-

Total = Rs.4,500/- + Rs.1,125/- = Rs.5,625/-

After 1/3 deduction = Rs.3,750/-

Loss of dependency

= Rs.3,750/- x 12 x 14

= Rs.6,30,000/-

10. Apart from the above said amount, the claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards "loss of estate", "loss of love and affection" and "funeral expenses" respectively, as per the decision of the Supreme Court of India in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC). The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Loss of dependency	Rs.6,30,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.7,00,000/-

Thus the compensation awarded by the Tribunal in MCOP.No.2011 of 2004 is enhanced from Rs.2,85,000/- to Rs.7,00,000/- which would carry interest at the rate of 7.5% per annum.

11. CMA.No.3992 of 2008: In the instant case, the injured was aged 8 years on the date of the accident and was studying II standard. A perusal of the discharge summary (Ex.P10) issued by Government Stanley Hospital shows that she was admitted as an inpatient on 09.02.2004 and discharged on 21.02.2004. The X-ray report also shows that she had sustained a fracture on right clavicle bone. In the facts and circumstances, the partial permanent disability sustained by the claimant is fixed as 20% and a sum of Rs.2,000/- per percentage of disability is awarded. Considering the age of the claimant on the date of the accident, this Court is inclined to award a sum of Rs.25,000/- towards "pain and sufferings". The award passed by this court under various heads is extracted hereunder:

S. No.	Head	Amount granted by this Court
1.	Partial permanent disability	Rs.40,000/-
2.	Pain and sufferings	Rs.25,000/-
3.	Transportation	Rs.5,000/-
4.	Extra nourishment	Rs.10,000/-
5.	Attender's charges	Rs.2,000/-
6.	Damage to clothes	Rs.500/-
Total		Rs.82,500/-

Thus the compensation awarded by the Tribunal in MCOP.No.2012 of 2004 is enhanced from Rs.16,875/- to Rs.82,500/- which would carry interest at the rate of 7.5% per annum.

12. In the result,
CMA.No.3991 of 2008:

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,85,000/- to Rs.7,00,000/-.

(iii) The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The New India Assurance Company is directed to deposit the enhanced compensation amount ie., Rs.7,00,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.2011 of 2004 on the file of the Motor Accidents Claims Tribunal/ Chief Judge, Court of Small Causes, Chennai within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The apportionment made by the Tribunal shall be kept intact.

CMA.No.3992 of 2008:

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.16,875/- to Rs.82,500/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The New India Assurance Company is directed to deposit the enhanced compensation amount ie., Rs.82,500/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.2012 of 2004 on the file of the Motor Accidents Claims Tribunal/ Chief Judge, Court of Small Causes, Chennai within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

mbi

To

1.The The Chief Judge,
Motor Accidents Claims Tribunal,
Court of Small Causes,
Chennai.

2.The Section Officer
VR Section,
High Court of Madras.

+1 CC to Mr.A.A.Venkatesan, Advocate sr 89506.

+1 CC to Mr.M.Krishnamoorthy, Advocate sr 89437.

WEB COPY

CMA.Nos.3991 of 2008
& 3992 of 2008
& MP. No.1 of 2008

TM(CO)
SP(20/02/2020)