

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1562 and 2554 of 2018
and C.M.P.No.12392 of 2018

C.M.A.No.2554 of 2018

1.Tmt.Malliga

2.Thiru.Venkatesan

.. Appellants

Vs.

1.M.Pushparajan

2.The Manager,
The Oriental Insurance Co. Ltd.,
Motor TP Claims, No.115,
Prakasam Road, Broadway,
Chennai - 600 018.

3.D.Kesavan

.. Respondents

C.M.A.No.1562 of 2018

The Manager,
The Oriental Insurance Co. Ltd.,
Motor TP Claims, No.115,
Prakasam Road, Broadway,
Chennai - 600 018.

.. Appellant

vs.

1.Tmt.Malliga

2.Thiru.Venkatesan

3.M.Pushparajan

4.D.Kesavan

.. Respondents

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Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 21.11.2017 made in M.A.C.T.O.P.No.75 of 2016, on the file of Motor Accident Claims Tribunal / Special District Court-I, Thiruvallur.

In C.M.A.No.2554 of 2018

For Appellants : Mr.K.Elumalai
For R2 : Mr.M.Krishnamoorthy

In C.M.A.No.1562 of 2018

For Appellant : Mr.M.Krishnamoorthy
For R1 and R2 : Mr.K.Elumalai

C O M M O N J U D G M E N T

C.M.A.No.1562 of 2018 is filed by the Insurance Company against the award dated 21.11.2017 made in M.A.C.T.O.P.No.75 of 2016, on the file of Motor Accident Claims Tribunal / Special District Court-I, Thiruvallur.

C.M.A.No.2554 of 2018 is filed by the claimants for enhancement of compensation granted by the award dated 21.11.2017 made in M.A.C.T.O.P.No.75 of 2016, on the file of Motor Accident Claims Tribunal / Special District Court-I, Thiruvallur.

2.Both the appeals are arising out of the same accident and same award and hence, they are disposed of by this common judgment.

3.Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

4.The appellants and respondents in C.M.A.No.2554 of 2018 are claimants and respondents respectively in M.A.C.T.O.P.No.75 of 2016, on the file of the Special District Court-I, Thiruvallur. The claimants filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of their son viz., V.Yuvaraj, who died in the accident that took place on 06.03.2016.

5.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car and all the three respondents are liable to pay compensation and directed the second respondent/Insurance Company, who is insurer of the

car, to pay a sum of Rs.10,89,000/- as compensation to the claimants and recover the same from the respondents 1 and 3.

6. Against the said award dated 21.11.2017 made in M.A.C.T.O.P.No.75 of 2016, the second respondent/Insurance Company has come out with C.M.A.No.1562 of 2018 challenging the liability as well as quantum of compensation. Not being satisfied with the amounts granted by the Tribunal, the claimants have come out with C.M.A.No.2554 of 2018 seeking enhancement of compensation.

7. The learned counsel appearing for the claimants contended that the second respondent/Insurance Company has not raised the issue before the Tribunal about negligence on the part of rider of motorcycle. No evidence was let in with regard to negligence on the part of the claimants. There is no specific finding given by the Tribunal that the accident occurred due to travelling of three persons in a motorcycle. In the absence of evidence, the learned counsel for the second respondent/Insurance Company is not entitled to raise the issue of contributory negligence and in support of his contentions, he relied on the following judgments:

(i) C.M.A.No.2014 of 2004, dated 21.07.2009 (The New India Assurance Company Limited, T.K.Duraisamy and others);

(ii) C.M.A.No.103 of 2009, dated 02.07.2012 (The Managing Director, Tamil Nadu State Transport Corporation Limited vs. Maheswari);

(iii) 2004 (1) TN MAC 180 (DB) (Kattabomman Transport Corporation Limited, represented by its Managing Director, Vannarpettai, Tirunelveli vs. Vellai Duraichi and others);

The learned counsel appearing for the claimants further contended that the deceased was aged 19 years at the time of accident and he studied trade of Welder (I.T.I) and was working as an electrician and was earning a sum of Rs.12,000/- per month. The Tribunal fixed a sum of Rs.8,000/- per month as notional income of the deceased, which is meager and the Tribunal ought to have fixed the monthly income of the deceased at Rs.12,000/- per month. The Tribunal failed to grant any amount towards future prospects. The amount granted by the Tribunal towards loss of love and affection is meager and prayed for enhancement of compensation under different heads.

8. The learned counsel appearing for the second respondent/Insurance Company contended that the deceased was a pillion rider in a motorcycle, where three persons were travelling at the time of accident. The rider of motorcycle, who also died on the spot, could not control the motorcycle and came and dashed against the car. The rider of motorcycle alone is

responsible for the accident by his rash and negligent riding. The claimants suppressed the fact that three persons travelled in the motorcycle and approached the Tribunal with unclean hands. The Tribunal has erred in fastening the liability on the driver of the santro car. In any event, the Tribunal ought to have fixed contributory negligence. At the time of accident, the driver of the santro car did not have Registration Certificate as R.C. certificate issued for 15 years expired on 26.02.2016, whereas accident had occurred on 06.03.2016. The learned counsel appearing for the second respondent/Insurance Company further contended that the claimants have not produced any evidence to show that the deceased was a qualified electrician and was earning a sum of Rs.12,000/- per month. In the absence of any document to prove the income of the deceased, the Tribunal has fixed notional income of the deceased at Rs.8,000/- per month and the same is excessive. The Tribunal has awarded excessive compensation towards loss of love and affection and funeral expenses. The learned counsel prayed for allowing C.M.A.No.1562 of 2018 filed by the Insurance Company and dismissal of C.M.A.No.2554 of 2018 filed by the claimants.

9. Heard the learned counsel for the claimants as well as the learned counsel appearing for the second respondent and perused the materials available on record.

10. From the materials available on record, it is seen that the claimants have examined P.W.2, an eye-witness, who was riding a motorcycle behind the motorcycle driven by the deceased was 50 meters ahead of motorcycle driven by P.W.2. At that time, driver of santro car in a rash and negligent manner drove the car and dashed against the motorcycle driven by the deceased. The Tribunal considering the averments made in the claim petition, Ex.P1/F.I.R., Ex.P3/rough sketch and evidence of P.W.2, held that the accident occurred only due to rash and negligent driving by the driver of the santro car. The second respondent has not let in any acceptable evidence to dispute the evidence of P.W.2 and did not dispute that F.I.R. was lodged only against the driver of santro car. The Tribunal has considered the above materials in proper perspective and has rightly held that the accident occurred only due to rash and negligent driving by the driver of santro car and there is no error in the said finding warranting interference by this Court.

11. The contention of the learned counsel for the second respondent/Insurance Company that three persons travelled in the motorcycle at the time of accident, the rider of the motorcycle could not control the motorcycle and dashed against the car and

caused the accident, is not substantiated by letting in any evidence. But it is to be taken note that the deceased travelled in the motorcycle along with two others in the motorcycle, which is in violation of statutory provisions as only two persons can travel in a two wheeler. This Court and the Hon'ble Apex Court in such cases, fix the contributory negligence on the part of the rider of the motorcycle. Such principle apply to the person, who travelled in the pillion in excess of statutory limitation. Even if plea of contributory negligence is not pleaded, the Tribunal and the Courts have power to fix contributory negligence based on facts and circumstances of the case. The judgments relied on by the learned counsel for the claimants are not applicable to the facts of the present case. In view of the fact that three persons travelled in the motorcycle in violation of statutory provision, 25% of contributory negligence is fixed on the deceased for whose death, the claimants have filed claim petition.

12.From the materials available on record, it is seen that the claimants have pleaded and let in evidence that the deceased studied trade of Welder (I.T.I) and was working as an electrician and was earning a sum of Rs.12,000/- per month. The Tribunal in the absence of any evidence fixed notional income of the deceased at Rs.8,000/- per month. The same is meager and is hereby enhanced to a sum of Rs.9,000/- per month. The Tribunal has not granted any amount for future prospects. As the deceased was 19 years old at the time of accident, the claimants are entitled to 40% enhancement for future prospects. The deceased was unmarried and 50% has to be deducted towards his personal expenses. In view of the above facts, the amount awarded towards pecuniary loss is modified as follows:

$$\text{Rs.9,000/-} + (40\% \text{ of Rs.9,000/-}) \times 12 \times 18 \times 1/2 = \text{Rs.13,60,800/-}$$

13.As per the judgment of the Hon'ble Apex Court reported in 2018 (2) TNMAC 452 (SC) Supreme Court (Magma General Insurance Company vs. Nanu Ram @ Chuhru Ram and others), the claimants are entitled to a sum of Rs.40,000/- each towards parental consortium. The Tribunal has awarded a sum of Rs.2,00,000/- towards loss of love and affection and a sum of Rs.25,000/- towards funeral expenses and the same are hereby reduced to a sum of Rs.40,000/- each towards loss of love and affection and a sum of Rs.15,000/- towards funeral expenses. The Tribunal did not grant any amount towards loss of estate. This Court awards a sum of Rs.15,000/- towards loss of estate.

14. In view of 25% contributory negligence is fixed, the second respondent is directed to pay only 75% of compensation awarded. The Registration Certificate for the Santro car was not in force at the time of accident and expired on 26.02.2016 and the Tribunal directed the second respondent to pay the compensation to the claimants and recover the same from the respondents 1 and 3. There is no error in the said direction as the claimants must enjoy the fruits of the award passed in the claim petition. The compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pecuniary loss	8,64,000	13,60,800	enhanced
2.	Loss of love and affection	2,00,000	80,000	reduced
3.	Funeral expenses	25,000	15,000	reduced
4.	Parental consortium	-	80,000	awarded
5.	Loss of estate	-	15,000	granted
	Total	10,89,000	15,50,800	Enhanced by Rs.4,61,800/-

15. With the above modification, the Civil Miscellaneous Appeals are partly allowed. The compensation of Rs.10,89,000/- awarded by the Tribunal is hereby enhanced to Rs.15,50,800/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The claimants shall pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the claimants shall not be entitled for any interest for the delay period on the enhanced amount of Rs.4,61,800/-. The claimants are entitled to 75% of the said award amount, as 25% negligence is fixed on the part of the deceased. Therefore, the claimants are entitled to a sum of Rs.11,63,100/- as compensation. The first claimant, being mother of the deceased, is entitled to a sum of Rs.6,63,100/- and

second claimant, being father of the deceased, is entitled to a sum of Rs.5,00,000/-. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective shares apportioned by this Court along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal
Special District Judge-I
Thiruvallur.

+1 cc to M/s.B.Sharmila, Advocate, S.R.No.2883

+1 cc to M/s.M.Krishnamoorthy, Advocate, S.R.No.2918

CMA.Nos.1562 and 2554 of 2018

RR(CO)
SSM(11/04/2019).

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