

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2061 of 2018

1. Anitha Margarette
2. Minor Arun rep.by his mother and
next friend the first appellant herein
... Appellants/Petitioners

vs.

1. K.K.Lalan
2. The Branch Manager,
United India Insurance Company Ltd.,
Branch, "Sharanya" Ground Floor,
Hospital Road, Ernakulam-11.
... Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act against
the judgment and decree dated 16.11.2010 made in
M.A.C.T.O.P.No.54 of 2010 on the file of the Motor Accidents
Claims Tribunal, (District Judge) at Karaikal.

For Appellants : Mr. T.Susindran
For R-1 : Exparte
For R-2 : Mr. S.Arunkumar

J U D G M E N T

This appeal has been preferred by the claimants against the
judgment and decree dated 16.11.2010 made in M.C.O.P.No.54 of
2010 on the file of the Motor Accidents Claims Tribunal,
(District Judge) Karaikal.

2.The case in brief, is as follows:

On the fateful day, ie. on 09.09.2009, at about 18.30 hours,
the deceased Sajith Sivadass was riding his motorcycle bearing
registration No.PY-02-E-1901 on the Beach Road, opposite to the
Radar Station. At that time, another motorcycle bearing
Registration No.KL-07-BF-6302 belonging to the first respondent
and insured with the second respondent Insurance Company, came
from the opposite direction in a rash and negligent manner and
dashed against the deceased. Due to the said impact, the

deceased sustained grievous injuries and died on the spot. The wife and son of the deceased, being the surviving legal heirs, filed a claim petition before the Tribunal, seeking compensation of Rs.10,00,000/-. On consideration of the materials and evidence available on record, the Tribunal has arrived at a total compensation of Rs.7,97,000/-, with interest at the rate of 7.5% per annum from the date of petition. Giving a finding that the accident had occurred due to the rash and negligent driving of the both the riders of the motorcycles, the Tribunal fixed the contributory negligence on the part of both the riders at the ratio of 50:50 and directed the owner of the motorcycle bearing Registration No.KL-07-BF-6302 and the Insurance Company, jointly and severally to pay 50% of the compensation to the claimants. Feeling aggrieved and being dissatisfied with the quantum of compensation so awarded, the appellants are before this Court with the present appeal seeking enhancement of compensation.

3.The learned counsel for the appellants has submitted that the Tribunal has fixed 50% contributory negligence on the part of the deceased, without any basis. The Tribunal ought to have fixed the entire negligence on the part of the first respondent motorcycle rider when there is no contra evidence available to show that the deceased was at fault. It is further submitted that the compensation awarded by the Tribunal is on the lower side and hence, the same requires substantial enhancement.

4.Per contra, the learned counsel appearing for the second respondent Insurance Company has submitted that the Tribunal, after considering the materials and evidence available on record in proper perspective, has awarded the compensation, which is just, fair and reasonable and hence the same need not be interfered with by this Court.

5.With regard to contributory negligence, it remains to be stated that FIR has been lodged by a third party. P.W.2-Selvaraj is the eye-witness to the accident. He clearly deposed before the Tribunal that on 09.09.2009 at 18.40 hours, two persons who were travelling in their respective motorcycles collided with each other on the Beach Road and among them one died on the spot and another one was lying with serious injuries on the road and in this respect, a case has been registered in Cr.No.36/2009. The Tribunal has given a further finding that from the position of the vehicles shown in the sketch, it could be easily inferred that both the riders came in opposite directions in a rash and negligent manner and collided with each other on the middle of the road and both of them fell down. In the circumstances, the Tribunal rightly fixed the contributory negligence on the part of the deceased and the rider of the motorcycle bearing Registration No.KL-07-BF-6302, equally at

50:50. This Court is not inclined to interfere with such factual findings arrived at by the Tribunal.

6. Coming to compensation part, the following are the details of compensation awarded by the Tribunal:

HEADS	AMOUNT (Rs.)
Loss of income	7,80,000/-
Loss of love and affection	10,000/-
Loss of consortium	5,000/-
Funeral expenses	2,000/-

TOTAL.....	7,97,000/- =====

Out of the above sum of Rs.7,97,000/-, 50% amount has been deducted towards contributory negligence and accordingly, the respondents 1 and 2 were directed to deposit a sum of Rs.3,98,500/- with interest at the rate of 7.5% per annum from the date of petition.

7. With regard to loss of income, taking note of the materials and evidence, the Tribunal has fixed the monthly income of the deceased at Rs.7,500/-, arrived at the annual income at Rs.90,000/-, and thereafter deducted 1/3rd of the amount towards personal expenses, adopted the multiplier of 13 and arrived at the loss of income at Rs.7,80,000/-.

8. Taking note of the age and avocation of the deceased, this Court deems it fit to fix the monthly income of the deceased at Rs.8,000/- and to add 25% of the amount towards future prospects. The deceased was aged 37 years at the time of accident. Adopting the multiplier of 13 would be proper, in the light of the decision of the Hon'ble Supreme Court in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC. Thus, the Tribunal has adopted the correct multiplier. If Rs.8,000/- is taken as monthly income and 25% of the amount is added towards future prospects and thereafter 1/3rd of the amount is deducted towards personal expenses and 13 multiplier is adopted, the loss of income works out to Rs.10,40,000/- ([Rs.8,000/- + Rs.2,000/- FP] x 12 x 13 - 1/3), and accordingly it is modified. The Tribunal has not awarded any amount towards loss of estate and hence, a sum of Rs.15,000/- is now awarded under this head. Further, it would be appropriate to enhance the amounts awarded by the Tribunal towards Loss of love and affection to Rs.40,000/-, towards Loss of Consortium to Rs.40,000/- and towards Funeral expenses to Rs.15,000/-. The details of the modified compensation are as under:

HEADS	AMOUNT (Rs.)
Loss of income	10,40,000/-
Loss of love and affection	40,000/-
Loss of Consortium	40,000/-
Loss of Estate	15,000/-
Funeral expenses	15,000/-

TOTAL.....	11,50,000/-
	=====

Since 50% contributory negligence has been fixed on the part of the deceased, the claimants are entitled to the modified compensation of Rs.5,75,000/- with interest at the rate of 7.5% per annum from the date of petition. It is made clear that the appellants/claimants are not entitled for interest for the period of delay in filing the appeal, only in respect of the enhanced amount of compensation. It is also made clear that the appellants have to pay appropriate Court fee in order to receive the awarded amount.

9. Accordingly, the Civil Miscellaneous Appeal is allowed in part. No costs. The respondents 1 and 2 are jointly and severally, directed to deposit the modified compensation amount as ordered above, after deducting the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. During the time of filing the claim petition, ie., in the year 2009, the second appellant was 10 years old. Now, he would have attained majority. Hence, on such deposit being made, the appellants / claimants are permitted to withdraw their respective shares as per the ratio of apportionment made by the Tribunal, on making proper application.

सत्यमेव जयते Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The District Judge,
The Motor Accidents Claims Tribunal,
Karaikal.

Copy to :
The Section Officer,
VR Section, Madras High Court.

+1 cc to M/s.S.Arunkumar, Advocate Sr.No. 32370

C.M.A.No.2061 of 2018

EV (CO)
RMP (28/04/2021)



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