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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.479 of 2014

1. Smt.T.D.Claraa
2. T.D.Pavul Prekumar
3. T.D.Solomen
4. Minor T.D.Christe Johnsi Rani -
rep.by her natural Guardian/mother Smt.T.D.Claraa
5. Smt.A.Arokiamarry
6. T.C.Arulappa Naidu

...Appellants/Petitioners

vs.

1. S.Irudayaraj
2. The Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
"Sorrento Building" 1st Floor,
Lattice Bridge Road, Adyar,
Chennai - 600 020.

(1st respondent was set ex-parte before the court below.
Hence notice may be dispensed with.)

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 04.01.2013 made in M.C.O.P.No.481 of 2008 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) Kancheepuram.

For Appellants : Mr.M.Sivakumar

For Respondents : R1 - Exparte

Mr.E.Rajadurai for R2
for Mr.N.Vijayaraghavan

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the claimants challenging the Award dated 04.01.2013 passed by the Motor Accident Claims



Tribunal, (Subordinate Judge) Kanchipuram in M.C.OP.No.481 of 2008.

2. Heard Mr.M.Sivakumar, learned counsel for the Appellants and Mr.E.Rajadurai, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

3. The Appellants/claimants have filed this appeal on the following grounds:

(a) The deceased T.A.Devadoss is not responsible for the cause of accident and therefore, the Tribunal ought not to have fixed contributory negligence on his part at 50%.

(b) The quantum of compensation awarded by the Tribunal under the impugned Award is not a just compensation and it has to be enhanced.

4. A person by name T.A.Devadoss died on 07.05.2008 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. The accident happened when T.A.Devadoss was riding his TVS XL Super motorcycle and another vehicle namely Tata Maxi Cab Turbo Van bearing Registration No.TN-21-AX-0294 owned by the first respondent and insured with the second respondent dashed against TVS XL Super motorcycle and as a result of the accident T.A.Devadoss fell down from the vehicle and sustained grievous injuries and he died on the spot. The Appellants who are the dependants of T.A.Devadoss preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.481 of 2008 seeking compensation for the death of T.V.Devadoss.

5. The Motor Accident Claims Tribunal under the impugned Award dated 04.01.2013 fixed the contributory negligence of the deceased T.A.Devadoss at 50% and the contributory negligence on the driver of the vehicle insured with the second respondent at 50% and has assessed the total compensation payable to the Appellants/claimants at Rs.3,48,000/- together with interest and cost.

6. The details of the compensation awarded by the Tribunal under the impugned Award are as follows:



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Loss of dependency	-	Rs.2,88,000/-
Funeral expenses	-	Rs. 25,000/-
Transport	-	Rs. 10,000/-
Love & affection	-	Rs. 25,000/-

Total		Rs.3,48,000/-

After deducting 50% of contributory negligence - Rs.1,74,000/-

7.Before the Tribunal, the Appellants/claimants have filed 6 documents which were marked as Exs.P1 to P6 and two witnesses were examined on their side namely, the wife of the deceased Tmt.Claraa as PW1 and Mr.Agastin, an eye witness to the accident as PW2. On the side of the Appellant Insurance Company, one document was filed and two witnesses were examined on their side namely, RW1 and RW2 before the Tribunal.

8.FIR (Ex.P1) has been registered only against the driver of the vehicle insured with the second respondent. The charge sheet (Ex.R1) has also been filed by the Police only against the driver of the vehicle insured with the second respondent. However, the Tribunal based on Ex.R1 (charge sheet) which reveals that the accident happened in a four road junction and the deceased who was the rider of the TVS XL Super motorcycle crossed the road suddenly resulting in the vehicle insured with the second respondent dashing against the second respondent's vehicle fixed the contributory negligence at 50% on the driver of both the vehicles namely, TVS XL Super motorcycle driven by the deceased and Tata Maxi Cab Turbo Van insured with the second respondent.

9.RW2, the driver of the vehicle insured with the second respondent has also deposed before the Tribunal that the accident happened in a four road junction and according to him, the deceased was the cause of the accident. When the FIR (Ex.P1) as well as the charge sheet (Ex.R1) will clearly reveal that the major fault and negligence is on the part of the driver of Tata Maxi Cab Turbo Van insured with the second respondent, this Court is of the considered view that the fixation of the contributory negligence in the ratio of 50% : 50% is not a correct assessment made by the Tribunal. Excepting for the fact that in the charge sheet (Ex.R1) and the oral evidence adduced by the driver of Tata Maxi Cab Turbo Van insured with the second respondent (RW2) that the deceased had suddenly crossed the road in a four road junction. No other evidence is available to prove that the driver of TVS XL Super motorcycle (deceased) was

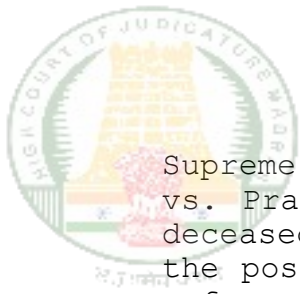


equally responsible for the cause of the accident. Therefore, this Court is of the considered view that the contributory negligence fixed on the part of the deceased at 50% is on the higher side when the evidence will clearly reveal that the major part of the negligence is only on the part of the vehicle insured with the second respondent. Therefore, this Court will have to necessarily refix the contributory negligence of the deceased from 50% to 25% and refix the contributory negligence of the driver of the vehicle insured with the second respondent at 75%. Therefore, the first contention raised by the Appellants with regard to fixation of contributory negligence by the Tribunal is partially decided in their favour by refixing the contributory negligence of the rider of TVS XL Super motorcycle (deceased) at 25% instead of 50% fixed by the Tribunal and the contributory negligence on the driver of the vehicle insured with the second respondent at 75%. Accordingly, the Appellants/claimants are entitled to recover 75% of the total compensation that is being assessed by this Court.

10.As regards the quantum of compensation awarded by the Tribunal is concerned, the Appellants/claimants are certainly entitled for enhancement of compensation for the following reasons:

(a)In the claim petition, the Appellants/claimants have pleaded that the deceased T.V.Devadoss was aged 54 years and an agriculturist and owner of Silk Weaving Machine and he was earning Rs.10,000/- per month. The accident happened in the year 2008. Since no documentary evidence was produced by the Appellants/claimants, the Tribunal fixed the notional monthly income of the deceased at the time of the accident as Rs.4,500/-. This Court is of the considered view that the said assessment is not a correct assessment in view of the decision of the Hon'ble Supreme Court in the case of Syed Sadiq and Others vs. Divisional Manager, United India Insurance Company Limited reported in (2014) 2 SCC 735. As per the aforesaid decision, for a vegetable vendor for an accident that happened in the year 2008, the Hon'ble Supreme Court fixed the notional monthly income of the vegetable vendor at Rs.6,500/-. However, in the case on hand, the deceased victim is aged 56 years as per the postmortem certificate and therefore, the same assessment will have to be applied. Therefore, this Court fixes the notional monthly income of the Appellant at Rs.6,500/- instead of Rs.4,500/- fixed by the Tribunal.

11.The Tribunal has not awarded any compensation towards loss of future prospects to the Appellants/claimants which they are legally entitled to as per the decision of the Hon'ble



Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and others reported in (2017) 16 SCC 680. The deceased was aged 56 years at the time of the accident as per the postmortem certificate (Ex.P2). As per Pranay Sethi judgment referred to supra, this Court awards 10% towards loss of future prospects to the Appellants/claimants. The Tribunal has erroneously deducted 1/3rd towards personal expenses of the deceased whereas the correct deduction is 1/5th since the Appellants are six in number. Accordingly, the same is modified by this Court. The Tribunal has also erroneously applied 8 multiplier instead of 9 multiplier as per the decision of Hon'ble Supreme Court in the case of Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and Another reported in (2009) 6 SCC 121. Accordingly, the same is modified by this Court.

12.For the foregoing reasons, the loss of dependency is enhanced from Rs.2,88,000/- to Rs.5,70,240/- by this Court as detailed hereunder:

Income fixed	-	Rs.6,000/- per month
Future prospects	-	10% (Rs.600/-)
Personal expenses	-	1/5 th
Loss of dependency	-	Rs.6,000+Rs.600*12*9*4/5=Rs.5,70,240/-

13.The Tribunal has awarded excess compensation of Rs.25,000/- to the Appellants/claimants towards funeral expenses. The Appellants/claimants are legally entitled only to Rs.15,000/- as per the decision of Pranay Sethi judgment referred to supra. Accordingly, the same is reduced to Rs.15,000/- by this Court.

14.Being a fatal accident, the Tribunal ought not to have awarded any compensation towards transportation cost. But the Tribunal has erroneously awarded a sum of Rs.10,000/- towards transportation cost. Therefore, this Court removes the said head of compensation.

15.The Tribunal has awarded a meagre compensation of Rs.25,000/- towards love and affection. As per the settled practice, the Appellants/claimants are entitled to Rs.80,000/- as compensation towards loss of love and affection.

16.It is settled practice that the Appellants/claimants are entitled for compensation towards loss of estate. Accordingly, this Court awards a sum of Rs.15,000/- as compensation towards loss of estate. The first Appellant/first claimant are also entitled for loss of consortium at Rs.40,000/- as per Pranay



Sethi judgment referred to supra. Accordingly, the same is awarded by this Court.

17. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.3,48,000/- to Rs.7,20,240/- by this Court in the following manner:

Loss of dependency	-	Rs.5,70,240/-
Funeral expenses	-	Rs. 15,000/-
Loss of Love and affection	-	Rs. 80,000/-
Loss of estate	-	Rs. 15,000/-
Loss of consortium	-	Rs. 40,000/-

Total		Rs.7,20,240/-

18. In view of re-working of the contributory negligence by this Court, the Appellants/claimants are entitled to recover 75% out of the total compensation of Rs.7,20,240/- which works to Rs.5,40,180/- together with accrued interest and cost.

19. In the result, the Appeal is partly allowed by refixing the contributory negligence in the ratio of 25% : 75% in favour of the Appellants and by directing the second respondent to deposit a sum of Rs.5,40,180/- after deducting the amount already deposited if any, together with interest at the rate of 7.5% from the date of the claim till the date of realization to the credit of M.C.O.P.No.481 of 2008, on the file of the Motor Accidents Claims Tribunal, (Subordinate Judge) Kanchipuram, within a period of four weeks from the date of receipt of a copy of this Judgment. Since the fourth claimant/appellant being a minor, her share amount shall be deposited in any nationalized bank till she attains majority and the guardian/first respondent is permitted to withdraw the accrued interest once in three months. On such deposit being made, the Tribunal is directed to transfer the Award amount along with accrued interest lying to the credit of M.C.O.P.No.481 of 2008 to the bank account of claimants/appellants 1 to 3, 5 & 6 through RTGS, within a period of two weeks thereafter. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
(Subordinate Judge) Kanchipuram.

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Copy to:

The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to M/s.C.Prabakaran, Advocate, S.R.No.29872

C.M.A.No.479 of 2014

VSN-II (CO)
SU(30/09/2021)