

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4872 of 2019

1.M.Manjula
2.M.Suganya
3.Minor. M.Saranya
4.Minor. M.Surya .. Appellants/Petitioners
(Minor appellants 3 & 4 are represented
by their Mother, M.Manjula, 1st appellant)

Vs.

1.S.B.Ganesh
2.P.Simmeressakiya
3.The New India Assurane Company Limited,
Third Party Cell, 5th Floor,
45, Moore Street,
Chennai - 600 001. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.03.2018 made in M.C.O.P.No.4934 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court-I, Small Causes Court, Chennai.

For Appellants : Ms.V.Suguna
For R3 : Mrs.R.Sree Vidhya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging 10% of contributory negligence fixed on the part of the deceased as well as enhancement of compensation granted by the award dated 02.03.2018 made in M.C.O.P.No.4934 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court-I, Small Causes Court, Chennai.

2. By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3. According to appellants/claimants, on 23.06.2013 at about 17.00 hours, while the deceased was crossing the Tambaram-Mudichur Road, the rider of the motorcycle belonging to the 1st respondent came in a rash and negligent manner and dashed against the deceased and caused the accident. Due to the said accident, the deceased succumbed to injuries in the hospital on 27.06.2013. Therefore the appellants/claimants filed claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one K.Mani, against the respondents, being the owner, rider and insurer of the motorcycle respectively.

4. The 1st respondent, owner of the motorcycle remained exparte before the Tribunal.

5. The 2nd respondent filed counter statement and denied all the averments made by the appellants/claimants and further stated that the appellants/claimants have to prove that they are the legal heirs of the deceased. The 2nd respondent insured the motorcycle with the 3rd respondent-Insurance Company and hence, the 3rd respondent is only liable to pay compensation. The deceased crossed the road without obeying the traffic rules and there was no pedestrian crossing at the place of accident. Therefore, the accident occurred due to entire negligence on the part of the deceased and hence, the 2nd respondent is not liable to pay any compensation to the appellants/claimants. In any event, the quantum of compensation claimed by the appellants/claimants is exorbitant and prayed for dismissal of the claim petition.

6. The 3rd respondent/Insurance Company filed counter statement and denied all the averments made by the appellants/claimants. According to 3rd respondent/Insurance Company, the motorcycle was not insured with the 3rd respondent. The appellants have to prove the age, avocation and income of the deceased by valid documents. The deceased only walked through the heavy and busy traffic area where there is no signal or police officer to control the traffic and hit by the motorcycle, due to his contributory negligence. Hence, the 3rd respondent is not liable to pay any compensation. The appellants have to prove that they are the legal heirs of the deceased by valid legal heirship certificate. In any event, the quantum of compensation claimed by the appellants/claimants is highly excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, on behalf of the appellants/claimants, the first appellant examined herself as P.W.1 and S.Venkatesh, eye-witness as P.W.2 and 17 documents were marked as Exs.P1 to P17. The respondents did not let in any

oral or documentary evidence.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider of the motorcycle, 2nd respondent herein as well as contributory negligence on the part of the deceased and fixed negligence in the ratio 90% : 10% and directed the 3rd respondent/Insurance Company, being the insurer of the motorcycle to pay a sum of Rs.11,94,750/- being 90% of the award amount as compensation to the appellants.

9. Not being satisfied with the amounts awarded by the Tribunal and for setting aside the portion of the award fixing 10% contributory negligence on the part of the deceased, the appellants have come out with the present appeal.

10. The learned counsel appearing for the appellants contended that the Tribunal erred in fixing 10% contributory negligence on the part of the deceased, who is a pedestrian. Only the breakneck speed of the 2nd respondent has caused the accident. The Tribunal ought to have fixed entire negligence on the part of the respondents. The deceased was a welder and was earning a sum of Rs.10,000/- per month. But the Tribunal fixed meagre sum of Rs.7,000/- per month as notional income of the deceased and awarded meagre sum of Rs.11,02,500/- towards loss of dependency. The deceased was aged 40 years at the time of accident and the Tribunal ought to have granted 50% enhancement towards future prospects instead of 25%. The deceased was the sole breadwinner of the family and the Tribunal ought to have awarded more compensation. The total compensation awarded by the Tribunal under different heads are meagre and prayed for setting aside the portion of the award fixing 10% contributory negligence on the part of the deceased as well as for enhancement of compensation.

11. Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the deceased only walked through the heavy and busy traffic area where there is no signal or police officer to control the traffic and crossed the road in between the gap in the median wall and invited the accident. Therefore, the 3rd respondent-Insurance Company is not liable to pay the compensation and the Tribunal ought to have fixed entire negligence on the part of the deceased. The appellants have not produced any material evidence to prove that the deceased was earning a sum of Rs.10,000/- per month. In the absence of any material evidence to prove the avocation and income of the deceased, a sum of Rs.7,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre.

The appellants are not entitled to any enhancement towards future prospects. The Tribunal has awarded a sum of Rs.1,50,000/- towards loss of love and affection, which is highly excessive. Therefore, the amounts awarded by the Tribunal under different heads are not meagre and the appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellants as well as the 3rd respondent and perused the entire materials on record.

13. From the materials available on record, it is seen that the accident has occurred when the deceased was trying to cross the road. P.W.2/eye-witness, in his cross examination by the learned counsel for the 3rd respondent has deposed that the deceased tried to cross the road, where there was no Zebra Crossing or for the pedestrian to cross the road. He also deposed that the deceased crossed the road in between the gap in the median wall and thus, hit by the motorcycle. Considering the evidence of P.W.2/eye-witness in his cross examination, the Tribunal has held that the accident has occurred due to negligence on the part of the rider of the motorcycle as well as negligence on the part of the deceased and fixed 10% contributory negligence on the part of the deceased. There is no error in the above finding of the Tribunal, warranting interference by this Court to set aside 10% of contributory negligence fixed on the part of the deceased.

14. As far as quantum of compensation is concerned, the appellants have contended that the deceased was a Welder and was earning a sum of Rs.10,000/- per month. They failed to prove their said contention. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.7,000/- per month as notional income of the deceased. The accident occurred in the year 2013 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.8,000/- per month is fixed as notional income of the deceased. The deceased was aged 40 years at the time of accident and the Tribunal rightly granted 25% enhancement towards future prospects of the deceased. In view of the above, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.12,60,000/- {Rs.10,000/- [Rs.8,000/- + Rs.2,000/- (25% of Rs.8,000/-)] X 12 X 14 X $\frac{3}{4}$ }. The amounts awarded by the Tribunal towards loss of consortium, loss of love and affection, loss of estate, transportation and funeral expenses are just and reasonable and hence, the same are confirmed. Thus, 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.	Loss of dependency	11,02,500/-	12,60,000/-	Enhanced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Loss of love and affection	1,50,000/-	1,50,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Transportation	5,000/-	5,000/-	Confirmed
6.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	Rs.13,27,500/-	Rs.14,85,000/-	
	90% of compensation	Rs.11,94,750/-	Rs.13,36,500/-	enhanced by Rs.1,41,750/-

10% of negligence fixed by the Tribunal on the part of the deceased is hereby confirmed and 90% of the enhanced award amount comes to Rs.13,36,500/-.

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the 90% compensation awarded by the Tribunal at Rs.11,94,750/- is hereby enhanced to Rs.13,36,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd respondent is directed to deposit 90% of the enhanced award amount now determined by this Court, i.e., Rs.13,36,500/- along with proportionate 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 to the credit of M.C.O.P.No.4934 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court-I, Small Causes Court, Chennai. On such deposit, the appellants 1 and 2 are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor appellants 3 and 4 are directed to be deposited in any one of the Nationalized Bank, till they

attain majority. On such deposit, the first appellant, being the mother of the minor appellants 3 and 4 is permitted to withdraw the accrued interest once in three months, for the welfare of the minor appellants 3 and 4. It is made clear that the appellants are not entitled for any interest for Rs.1,41,750/- the amount now enhanced by this Court, as per the order of this Court dated 12.12.2019 made in C.M.P.No.26436 of 2019 in C.M.A.SR.No.150575 of 2019. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1.The Special Subordinate Judge No.I,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

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

+1 cc to Mr.R.Arundathan Advocate sr902
+1 cc to Mrs.R.Sreevidhya Advocate sr1649

C.M.A.No.4872 of 2019

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