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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.Nos.794 & 3097 of 2011

CMA No.794 of 2011

1. K.Latha
2. K. Moorthy (Minor)
3. K. Karthikeyan (Minor)
4. M.Kunjammal
5. M.Subramanian
(Minors rep. By mother & Natural
Guardian the 1st petitioner) ...Appellant/Petitioners

Vs

1. P.Parthiban
2. The New India Assurance Co. Ltd.,
No.92, G.N.Chetty Street,
Mezzanine Floor, East Coast Chambers,
T.Nagar, Chennai - 600 017.
3. V. Panneerselvam
(Remained Exparte before the Tribunal)
4. United India Insurance Co. Ltd.,
No.14, Whites Road,
Sudarshan Buildings,
II Floor, Chennai - 600 014. ...Respondents/Respondents

CMA No.3097 of 2011

United India Insurance Co. Ltd.,
No.14, Whites Road,
Sudarshan Buildings,
II Floor, Chennai - 600 014. ...Appellant/4th Respondent

Vs

1. K.Latha
2. Karthika K. Moorthy (Minor)
3. K. Karthikeyan (Minor)



4. M.Kunjammal
5. M.Subramanian ...1 to 5 Respondents/Petitioners
(Minors rep. By mother & Natural
Guardian the 1st petitioner)
6. P.Parthiban
7. The New India Assurance Co. Ltd.,
No.92, G.N.Chetty Street,
Mezzanine Floor, East Coast Chambers,
T.Nagar, Chennai - 600 017.
8. V. Panneerselvam ...6 to 8 Respondents/1 to 3 Respondents

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 15.09.2010 made in M.A.C.T.O.P.No.3098 of 2007 on the file of the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

In CMA No.794 of 2011

For Appellant	: Mr.K. Kalaiarasan
For R1	: No Appearance
For R2	: M/s.S.R.Sumathy
For R3	: Notice Served No Appearance
For R4	: Mr.S.Arun Kumar

In CMA No.3097 of 2011

For Appellant	: Mr.S.Arun Kumar
For R1 to R5	: Mr.R.Kalaiarasan
For R6 & R8	: No appearance
For R7	: Mr.M.Krishnamoorthy

COMMON JUDGMENT

These appeals have been laid as against the judgment and decree dated 15.09.2010 made in M.A.C.T.O.P.No.3098 of 2007 on the file of the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimants is that on 30.04.2007, when the deceased was walking along Jalandarpettai to Medavakkam Road, near Ganesh Flour Mill, the first respondent, who was riding his motor cycle bearing Registration No.TN-22-P8561 in a rash and negligent manner, hit against the on going motor cycle



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bearing Registration No.TN-07-Z-3969 riddled by the third respondent, in which the first respondent's motor cycle came and hit against the deceased, due to which, the pedestrian sustained grievous injuries and died in the hospital. Hence, the claim petition.

4. The second respondent filed a counter stating that the first respondent had a valid driving licence and the accident took place only because of the rash and negligent driving on the part of the third respondent and therefore, the second respondent is not liable to pay any compensation.

5. The fourth respondent filed a counter stating that only because of the rash and negligent driving of the first respondent the accident took place and therefore, the fourth respondent is no way connected to the accident. Since the first respondent had driven his motor cycle in a rash and negligent manner, and he himself had hit the motor cycle which was driven by the third respondent caused the accident, the fourth respondent is not liable to pay any compensation.

6. On the side of the claimants, they examined PW.1 and PW.2 and marked Exs.P1 to P6. On the side of the respondents no one was examined and no exhibits were marked.

7. A perusal of the records reveals that the Tribunal fastened the liability of 75% against the first respondent and 25% against the third respondent and awarded a sum of Rs.5,30,000/- as compensation payable by the respondents. Aggrieved by the same, the claimants filed CMA No.794 of 2011 and the Insurance Company filed CMA No.3097 of 2011, for enhancement of the award.

8. The learned counsel for the claimants submitted that the Tribunal failed to award any future prospects for the deceased, who died at the age of 44. Though, they specifically averred that he was earning a sum of Rs.7,545/- as monthly income and also was earning a sum of Rs.10,000/- from the real estate business, the Tribunal had taken only Rs.4,500/- as monthly income and awarded a very meagre compensation. The Tribunal also failed to award any compensation under the head of loss of estate and transportation charges.

9. Per contra, the learned counsel for the second respondent submitted that the Tribunal had rightly fixed the monthly salary at Rs.4,500/- for the deceased, since the claimants failed to prove his income by any documentary evidence.



10. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents and perused the materials available on record.

CMA No.794 of 2011

11. Though the Tribunal fixed contributory negligence at 75% on the first respondent and 25% on the third respondent for causing accident, the second and the fourth respondent, being their insurer, did not file any appeal. Insofar as quantum is concerned, though the claimants stated that the deceased was earning Rs.7,545/- per month and Rs.10,000/- from the real estate business, they did not file any documentary evidence. The accident took place in the year 2007. Therefore, the Tribunal rightly fixed the monthly income at Rs.4,500/-. There are totally five claimants and even then the Tribunal had deducted 1/3rd for personal expenditure of the deceased instead of 1/4th deduction. The Tribunal also failed to award any compensation for the future prospects of the deceased. Accordingly, the loss of income is calculated as Rs.4,500 * 25% - 1/4 * 12 * 14 = Rs.7,08,972/-. Therefore, this Court is inclined to award compensation under various heads as follows :

Heads	Amount awarded by Tribunal	Amount awarded by this Court (Rs.)
Pecuniary Loss [Rs. 4,500+25%-1/4 * 12 * 14 = Rs.7,08,972/-]	5,04,000.00	7,08,792.00
Loss of consortium	10,000.00	40,000.00
Loss of estate	10,000.00	20,000.00
Funeral expenses	6,000.00	10,000.00
Transportation charges	-	10,000.00
Damage of clothes	-	2,000.00
TOTAL	5,30,000.00	7,90,792.00

12. In the result the CMA No.794 of 2011 is allowed as follows:-

(i) The compensation awarded at a sum of Rs.5,30,000/- is enhanced to Rs.7,90,792/-.

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.



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(iii) The claimants are entitled to apportion the award amount as follows:-

1st claimant - Rs. 3,00,000.00/-

2nd and 3th claimant - Rs. 75,000.00/- each

4th and 5th claimant - Rs. 1,70,396.00/- each

(iv) The second respondent/Insurance Company is directed to deposit the enhanced award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of copy of this Judgment.

(v) On such deposit, the claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(vi) The claimants shall pay requisite Court fee before the receipt of the copy of the judgment for the enhanced compensation.

(vii) There shall be no order as to costs.

CMA No.3097 of 2011

13. The fourth respondent challenged the award and so far as the contributory negligence fixed at 25% by the Tribunal.

14. The learned counsel for the appellant submitted that even according to the claimants when the deceased was walking in the road, the first respondent drove his motor cycle in a rash and negligent manner, which was driven by the third respondent and thereafter hit against the deceased. Due to which, he sustained grievous injuries and died. Even then, the Tribunal, without any iota of evidence, fixed contributory negligence on the part of the third respondent at 25 %. In fact, the FIR was registered as against the first respondent and also charge sheet as against him.

15. On perusal of the records, it is seen that FIR was registered against the first respondent. The concerned Inspector of Police also laid charge sheet as against the first respondent. Even then, the Tribunal, on the strength of the eye witness of P.W.3, concluded that the accident occurred due to the rash and negligent driving of both the motor cycles, which were driven by the first and third respondent. Whereas, on perusal of the FIR, the accident took place only on the negligence on the part of the first respondent. Therefore, the Tribunal ought not to have fixed the contributory negligence on the part of the third respondent at 25%.



16. Accordingly, the decree dated 15.09.2010 made in M.A.C.T.O.P.No.3098 of 2007 on the file of the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai, is hereby set aside, insofar as fixing contributory negligence on the part of the third respondent at 25%. Therefore, the entire compensation is liable to be paid by the first and second respondent. The second respondent, being the insurer of the first respondent vehicle, is directed to pay the entire compensation as enhanced above.

17. Accordingly, the CMA No.3097 of 2011 is allowed. The fourth respondent is permitted to withdraw the amount deposited, if any, pursuant to the award, forthwith. If the deposited amount had already been withdrawn by the claimants, the fourth respondent is at liberty to recover the amount deposited by the fourth respondent from the second respondent in the manner known to law.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

Lpp
To

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

2.The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1 CC to Mr.S. Arun Kumar, advocate sr 26405
+1 CC to Mr.N.M.Muthurajan, Advocate sr 26145.
+1 CC to Mr.N.M.Muthurajan, Advocate sr 26145(12/04/2022)

C.M.A.Nos.794 & 3097 of 2011

CA(CO)
SP(04/04/2022)