



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.07.2021
CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.881 of 2015

1.Devi

2.Minor.Gokulprasath

S/o. Late Kuppusamy

Minor Rep by his Guardian/Mother Devi

3.Palani @ Rangan

4.Kaliammal

...Appellants/Petitioners

Vs

1.Venkidupathy

2.M/s.Rajam Transports,

Situated at Door No.339, Gobi Main Road,

Thimmaianpudur, Rangasamudiram Post,

Sathyamangalam Taluk, Erode District.

3.The New India Assurance Company Ltd.,

Rep. by its Branch Manager,

Situated at 139-A Amman Complex,

Erode.

(The respondents 1 & 2 are remained exparte
before the Tribunal, hence notice may be
dispensed with in this appeal)

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988, against the Judgment and Decree
dated 08.09.2014 made in M.C.O.P.No.349 of 2013 on the file of
MACT/Sub Court at Gobichettipalayam.

For Appellants : Mr.Ma.P.Thangavel

For Respondents : R1 & R2 - exparte
Mr.M.Krishnamoorthy for R3



J U D G M E N T

(This case was heard through Video Conferencing)

WEB COPY This appeal has been filed by the claimants seeking enhancement of compensation under the impugned Award dated 08.09.2014 passed by the Motor Accident Claims Tribunal, (Subordinate Judge, Gobichettipalayam) in MCOP.No.349 of 2013.

2.The Appellants/claimants unsatisfied with the quantum of compensation awarded by the Tribunal have preferred this appeal seeking for enhancement. They have also challenged the fixation of contributory negligence on the part of the deceased at 25% by the Tribunal.

3.The details of the assessment of compensation made by the Tribunal under the impugned award are as follows :-

Head	Amount awarded by the Tribunal
Loss of earning	Rs.28,80,000
Transport to Hospital	Rs.5,000
Funeral expenses	Rs.10,000
Loss of Love and affection	Rs.1,00,000
Loss of consortium	Rs.1,00,000
Total	Rs.30,95,000/-
Rs.30,95,000 - 25 % contributory negligence	Rs.23,21,250/-

4.The Tribunal after assessing the total compensation payable to the Appellants/claimants has also given a finding that the deceased is also responsible for the cause of the accident and fixed his contributory negligence at 25%.

5.Heard Mr.Ma.P.Thangavel, learned counsel for the Appellants and Mr.M.Krishnamoorthy, learned counsel for the third respondent. The respondents 1 and 2 have remained exparte both before the Tribunal as well as this Court.

6.The first Appellant is the wife, the second Appellant is the minor son and the Appellants 3 and 4 are the parents of the deceased. The deceased R.Kuppusamy died on 22.12.2011 as a result of an accident caused by two vehicles. The deceased was riding a motorcycle bearing registration No.TN 36 C 5509 and a



bus owned by the second respondent and insured with the third respondent which came from behind dashed against the motorcycle which resulted in the death of R.Kuppusamy. The Appellants/claimants claiming to be the dependants of the deceased preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.349 of 2013 seeking compensation for the death of R.Kuppusamy.

7.The Tribunal under the impugned Award dated 08.09.2014 passed in MCOP.No.349 of 2013 referred to supra has assessed the total compensation payable to the Appellants/claimants at Rs.30,95,000/- but at the same time has fixed the contributory negligence of the deceased at 25% due to the reason that the deceased was under the influence of alcohol at the time of the accident.

8.The Appellants/claimants have filed this appeal questioning the quantum of compensation awarded by the Tribunal as well as questioning the fixation of contributory negligence on the part of the deceased by the Tribunal at 25%.

9.This Court has perused and examined the materials available on record before the Tribunal.

10.Learned counsel for the Appellants drew the attention of this Court to the Accident Register which has been marked as Ex.P14 before the Tribunal which is the basis for fixation of contributory negligence on the part of the deceased at 25%. He also drew the attention of this Court to the Rough sketch which has been marked as Ex.P2 before the Tribunal and would submit that the deceased could have been never at fault as it was only the bus insured with the third respondent which came from behind and dashed against the two wheeler which was proceeding from North to South in the left side of the road by following traffic rules and regulations.

11.Learned counsel for the Appellants would submit that excepting for the reference in the Accident Register (Ex.P14) that there was smell of alcohol found in the deceased, without any test report as statutorily required under Section 185 of the Motor Vehicles Act, the Tribunal by total non-application of mind has fixed the contributory negligence of the deceased at 25% which is not a correct finding according to him.

12.In support of his submissions, he would also rely upon a judgment of the Hon'ble Division Bench of this Court in the case of Manikandan vs. P.Palani reported in 2020(1) TN MAC



Pg.449 and would submit that in the said decision, the Tribunal had fixed the contributory negligence on the part of the deceased due to smell of alcohol found in his body at 25% which was reduced to 10% by the Division Bench. He would also submit that there was no test report produced by the Insurance Company. Therefore, he would submit that fixation of 25% contributory negligence by the Tribunal under the impugned Award is an erroneous finding which has to be set aside by this Court.

13.Learned counsel for the Appellants also drew the attention of this Court to the impugned Award and would submit that the Tribunal has erroneously deducted 1/3rd towards personal expenses of the deceased despite the fact that there are 4 dependants for the deceased namely his wife, his minor son and his parents. According to him, the Tribunal ought to have deducted 1/4th towards personal expenses of the deceased instead of 1/3rd. In the evidence of PW1, she has pleaded that the deceased is also having a deaf and dumb brother namely Bandari aged 30 years who was in his care at the time of the accident.

14.Learned counsel for the Appellants also submitted that the Tribunal has erroneously failed to Award loss of future prospects to the Appellants/claimants which they are legally entitled to as per the settled law. He would submit that the deceased was having a regular employment as a fitter in J.K.K. Sampoorana Ammal Polytechnic and Engineering College and was earning Rs.18,000/- per month as per Exs.P12 and P13. He would also submit that the deceased was a permanent employee and has been working in the said Polytechnic College for the past 15 years.

15.Learned counsel for the Appellants drew the attention of this Court to the deposition of PW3 who was the Assistant Principal of J.K.K. Sampoorana Ammal Polytechnic and Engineering College who has deposed that the deceased was their employee. Hence according to him, since the age of the deceased was 34 years and was a permanent employee of J.K.K. Sampoorana Ammal Polytechnic and Engineering College the Appellants/claimants are entitled for loss of future prospects at 50%. He would also submit that no contra evidence has also been produced by the respondents before the Tribunal to disprove the age, avocation and salary of the deceased was earning at the time of the accident. On the aforementioned grounds, learned counsel for the Appellants would submit the Appellants/claimants are entitled for enhancement of compensation.



16. Per contra, Mr. M. Krishnamoorthy, learned counsel for the third respondent Insurance Company would submit that the quantum of compensation fixed by the Tribunal under the impugned Award is a just compensation and does not call for any interference by this Court.

17. With regard to the fixation of contributory negligence on the part of the deceased by the Tribunal at 25% is concerned, the learned counsel for the third respondent Insurance Company would rely upon the following authorities:

(a) In the case of Duraivendhan vs. Hindu Bharathi Education Company, Ambur and another reported in 2006 (1) CTC 446.

(b) The decision of the Hon'ble Supreme Court in SLP (Civil) No. 12489 of 2020 in the case of Iffco Tokio General Insurance Company Ltd. vs. Pearl Beverages Ltd.,

18. Relying upon the aforesaid decisions, the learned counsel for the third respondent Insurance Company would submit that the reference to intoxication is enough for the purpose of fixing the contributory negligence on the part of the deceased.

19. Learned counsel for the third respondent Insurance Company further submits that the father who is the third Appellant/third claimant who was aged 55 years at the time of the accident cannot be treated as a dependant of the deceased. Hence, according to him, the Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased which does not call for any interference by this Court. He would also submit that the Appellants/claimants have also not produced family card before the Tribunal to prove that the father was also a dependant of the deceased.

20. Learned counsel for the third respondent Insurance Company submits that the deceased was working in a private concern and therefore his employment is not a permanent one and the same has also not been proved by the Appellants/claimants before the Tribunal.

Discussions:

21. There is a procedure contemplated under Section 185 of the Motor Vehicles Act as to how it can be determined as to whether a person is under influence of alcohol or not at the time of the accident. Admittedly, in the case on hand, no scientific test was conducted and the procedure as laid down in Section 185 of the Motor Vehicles Act was also not followed.



WEB COPY

The Tribunal has relied upon the Accident Register which has been marked as Ex.P14 wherein there is a reference that smell of alcohol was found in the body of the deceased. Based on the said reference only, the Tribunal has fixed the contributory negligence of the deceased at 25%.

22. Admittedly, the two wheeler in which the deceased was a rider was proceeding in the front from the North to South direction and it was only the bus insured with the third respondent which was coming from behind which dashed against the said two wheeler which resulted in the death of the R.Kuppusamy. As seen from the Rough sketch Ex.P2, the two wheeler was travelling only in the left hand side of the road. Rough sketch also does not reveal that the deceased has violated the traffic rules. Excepting for the reference in the Accident Register Ex.P14 that the deceased was having a smell of alcohol in his body, no other supporting documents/ reports /breath analyzer test are available on record to establish that only due to the influence of alcohol, the accident had happened. However, some weightage will have to be given for the Accident Register Ex.P14 since it is also a public document of value. However, this Court is of the considered view that the fixation of contributory negligence of the deceased at 25% by the Tribunal is on the higher side and therefore, this Court reduces the same to 10% instead of 25% fixed by the Tribunal. Accordingly, the contributory negligence of the deceased is modified by this Court to 10% instead of 25% fixed by the Tribunal.

23. Before the Tribunal, the respondents have not disputed the age and the avocation of the deceased. The deceased was working as a fitter in a private Polytechnic College. The Appellants/claimants have also produced his salary certificate (Ex.P13) which confirms that the deceased was earning Rs.18,000/- per month at the time of the accident. The Appellants/claimants have also deposed before the Tribunal that the deceased was a permanent employee and has been working in the said institution for the past 15 years.

24. No contra evidence has been produced by the respondents before the Tribunal to disprove the contentions of the Appellants/claimants that the deceased was a permanent employee.

25. The Assistant Principal in the institution where the deceased was working at the time of the accident has also been examined as PW3 who has also deposed that the deceased was earning Rs.18,000/- per month at the time of the accident.



26. However, in view of the fact that the deceased has studied only upto 8th standard, this Court cannot Award 50% towards loss of future prospects to the Appellants/claimants as contended by the learned counsel for the Appellants but instead can Award only 40% towards loss of future prospects. Accordingly, this Court Awards a compensation towards loss of future prospects which was omitted to be awarded by the Tribunal to the Appellants/claimants at 40%.

27. The deceased was aged 34 years at the time of the accident. The Appellants/claimants to prove the age of the deceased have filed driving license of the deceased which was marked as Ex.P11 before the Tribunal which reveals that the date of birth of the deceased was 14.06.1977 and hence the age of the deceased would have been 34 years 6 months and 8 days. However, the Tribunal has erroneously fixed the age of the deceased at 35 years and has adopted the wrong multiplier of 15 instead of 16 which is applicable for a person aged 34 years. Accordingly, the same is modified by this Court.

28. The Tribunal has erroneously not deducted Income Tax which it ought to have deducted in accordance with the settled law as laid down in the decision of the Division Bench of this Court in the case of P.Rajan & Another vs. G.Rajkumar & Another reported in CDJ 2017 MHC 3084. Accordingly, in terms of the said decision, Income Tax is deducted by this Court.

29. This Court is of the considered view that the Tribunal has erroneously granted a compensation of Rs.1,00,000/- towards loss of Love and Affection and another sum of Rs.1,00,000/- towards loss of consortium which is on the higher side and not in accordance with the settled law as laid down by the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. vs. Pranay Sethi reported in 2017 16 SCC 680. In the said decision, the Hon'ble Supreme Court has fixed the compensation towards loss of Love and Affection to the children at Rs.40,000/- each. In the case on hand, the deceased has left behind only one minor son and therefore the Appellants/claimants are legally entitled to only Rs.40,000/- towards loss of Love and Affection and not Rs.1,00,000/- erroneously fixed by the Tribunal. Hence, this Court sets aside the findings of the Tribunal that the Appellants/claimants are entitled to Rs.1,00,000/- towards loss of Love and Affection instead and modifies the same by fixing the compensation towards loss of Love and Affection to the second Appellant/second claimant at Rs.40,000/-.



30.The Tribunal has also erroneously awarded a compensation of Rs.1,00,000/- towards loss of consortium to the first Appellant/first claimant which is also not in accordance with the settled law as laid down in Pranay Sethi judgment referred to supra. In the said judgment, the Hon'ble Supreme Court has fixed consortium payable to the wife at Rs.40,000/-. Hence, findings of the Tribunal fixing the compensation towards loss of consortium at Rs.1,00,000/- is set aside by this Court and instead this Court fixes a compensation towards loss of consortium at Rs.40,000/-.

31.The parents of the deceased are also the claimants before the Tribunal. The Appellants/claimants have pleaded that they were also the dependants of the deceased at the time of the accident.

32.No contra evidence has also been produced by the respondents before the Tribunal to disprove the contentions of the Appellants/claimants. Therefore, they are also entitled to be paid compensation towards loss of Love and Affection at Rs.40,000/- each. Accordingly, this Court fixes the compensation towards loss of Love and Affection to the parents at Rs.80,000/-.

33.The Tribunal has failed to Award any compensation towards loss of estate which the Appellants/claimants are legally entitled to as per Pranay Sethi Judgment referred to supra. In accordance with the said judgment, this Court awards a compensation of Rs.15,000/- towards loss of estate.

34.With regard to the compensation awarded by the Tribunal towards funeral expenses at Rs.10,000/- is concerned, the same is also low and not in accordance with the settled law and it has to be enhanced to Rs.15,000/- by this Court. Accordingly, the same is enhanced by this Court. The Tribunal has awarded a compensation of Rs.5,000/- towards transportation which is a correct assessment and therefore, the same is confirmed by this Court.

35.With regard to the judgments relied upon by the learned counsel for the third respondent Insurance Company is concerned, the facts and circumstances of each case varies. Further, this Court has not totally absolved the deceased from any contributory negligence but instead has only reduced the assessment of the contributory negligence by the Tribunal from 25% to 10% and therefore, the judgments relied upon by the learned counsel for the third respondent Insurance Company has no applicability for the facts and circumstances of this case.



WEB COPY

36. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.23,21,250/- fixed by the Tribunal to Rs.33,94,246/- by this Court as detailed hereunder:

Head	Amount awarded by the Tribunal	Enhanced /modified by this Court
Loss of earning	Rs.28,80,000	Rs.35,76,384
Transport to Hospital	Rs.5,000	Rs.5,000
Funeral expenses	Rs.10,000	Rs.15,000
Loss of Love and affection	Rs.1,00,000	Rs.40,000
Loss of consortium	Rs.1,00,000	Rs.80,000
Loss of consortium to wife	-	Rs.40,000
Loss of estate	-	Rs.15,000
Total	Rs.30,95,000/-	Rs.37,71,384/-
	-	-
	Rs.23,21,250/-	Rs.33,94,246/-
	-	-
Rs.30,95,000 - 25 % contributory negligence		Rs.23,21,250/-
		-
Rs.37,71,384 - 10% contributory negligence		Rs.33,94,246/-
		-

Since the contributory negligence of the deceased has been modified by this Court from 25% to 10%, the Appellants/claimants are entitled to Rs.33,94,246/- after deducting 10% out of total assessment of Rs.37,71,384/- towards 10% contributory negligence on his part.

37. In the result, the appeal is partly allowed. The third respondent Insurance Company is directed to deposit the modified award amount of Rs.33,94,246/- as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.329 of 2013 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge, Gobichettipalayam), within a period of eight weeks from the date of receipt of a copy of this Judgment. Since the second claimant/appellant being a minor, his share amount shall be deposited in any nationalized bank till he attains majority.



and the guardian/first respondent is permitted to withdraw the accrued interest once in six months. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the Appellants/claimants 1, 3 and 4 as per the ratio of apportionment fixed by the Tribunal through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any has to be paid by the appellants/claimants before receiving the copy of this Judgment.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

pam

To

1.The Motor Accident Claims Tribunal,
Subordinate Judge, Gobichettipalayam.

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

+1 CC to Mr.M.Krishnamoorthy, Advocate sr 32156
+1 CC to Mr.Ma.P.Thangavel, Advocate sr 31914.

C.M.A.No.881 of 2015

NK(CO)
SP(07/12/2021)