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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.832 of 2021

- 1.Kala
 - 2.Minor. Pradeep
 - 3.Minor. Praveena
(Minor appellants 2 & 3 are represented by their natural guardian and mother Kala, 1st appellant herein)
 - 4.Ayyavu
 - 5.Chinnammal
- ..Appellants/Claimants
- Vs.
- 1.Saravanan
 - 2.The Branch Manager,
The New India Assurance Company Limited,
New India Assurance Building,
87, M.G.Road, Fort, Mumbai - 400 001.
- ..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.11.2020 made in M.C.O.P.No.283 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

For Appellants : Mr.S.P.Yuaraj
For R2 : Mr.J.Chandran

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed challenging the portion of the award fixing 20% contributory negligence on the part of the deceased as well as for enhancement of compensation granted by the Tribunal in the award dated 30.11.2020 made in M.C.O.P.No.283 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

3.The appellants are the claimants in M.C.O.P.No.283 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur. They filed the above said claim petition, claiming a sum of Rs.70,00,000/- as compensation for



the death of one Ravi, who died in the accident that took place on 24.01.2015.

4. According to appellants on 24.01.2015, at about 01.15 A.M., while the deceased Ravi was driving the Omni Car bearing Registration No.TN 54 Z 9519 along with Selvam, Velappan and Senthilkumar from West to East on the extreme left side of the Permbalur - Ariyalur road near Kavulpalayam division road, the driver of the Tipper Lorry bearing Registration No.TN 54 D 4774 owned by 1st respondent and insured with the 2nd respondent, drove the same in a rash and negligent manner and dashed against the Omni Car driven by the said Ravi and caused the accident. In the accident, the said Ravi and the occupants of the car sustained multiple injuries and was taken to Government Hospital, Perambalur. Thereafter, the said Ravi was referred to ABC Hospital, Trichy. In spite of treatment, the said Ravi succumbed to injuries after 4 days in the Hospital. Therefore, the appellants filed the above said claim petition claiming a sum of Rs.70,00,000/- as compensation for the death of the said Ravi against the respondents, being the owner and insurer of the lorry respectively.

5. The 1st respondent - owner of the lorry remained exparte before the Tribunal.

6. The 2nd respondent-Insurance Company, insurer of the lorry filed counter statement and denied all the averments made by the appellants. The 2nd respondent denied the manner of accident as alleged by the appellants. According to the 2nd respondent, at the time of accident, while the driver of the lorry was driving the same near Kavulpalayam pirivu road, he saw the car coming in a rash and negligent manner. On seeing the same, the driver of the lorry blew horn and switched the 'on' and 'off' lights to give signal to the car. But, the said Ravi, did not care about the road traffic rules and came in the same fashion. Immediately, the driver of the lorry swerved the lorry to the extreme left side of the road and stopped the lorry. The deceased only drove the car in a rash and negligent manner and dashed against the parked lorry and invited the accident. Therefore, the accident has occurred only due to the negligence on the part of the deceased and there is no negligence on the part of the driver of the lorry owned by 1st respondent and hence, the 2nd respondent is not liable to pay any compensation to the appellants. The F.I.R. registered against the driver of the lorry owned by the 1st respondent is without proper investigation. The deceased also contributed negligence to the accident and hence, contributory negligence has to be fixed on the part of the deceased. The appellants have to implead the owner and insurer of the car driven by the deceased at the time of accident and also to prove that they are the legal heirs of



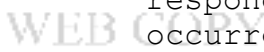
the deceased by producing valid documents. The 2nd respondent denied the fact that the driver of the lorry owned by 1st respondent was possessing valid driving license and also the fact that the lorry was insured with the 2nd respondent. The appellants have to prove that the lorry owned by 1st respondent was having valid permit at the time of accident. The 2nd respondent denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the appellants is highly excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st appellant examined herself as P.W.1, the claimants in M.C.O.P.Nos.284 to 286 of 2015 examined themselves as P.W.2 to P.W.4 and 43 documents were marked as Exs.P1 to P43. The 2nd respondent examined three witnesses as R.W.1 to R.W.3 and 6 documents were marked as Exs.R1 to R6 and the authorisation letter was marked as Ex.X1.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry owned by 1st respondent, fixed 20% contributory negligence on the part of the deceased for not possessing driving license at the time of accident, awarded a sum of Rs.17,90,810/- and directed the 2nd respondent to pay a sum of Rs.14,32,648/- being 80% of the award amount as compensation to the appellants.

9. Challenging the portion of the award fixing 20% contributory negligence on the part of the deceased and not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

10. The learned counsel appearing for the appellants contended that the Tribunal erroneously fixed 20% contributory negligence on the part of the deceased on the ground that the appellants have not produced the driving license of the deceased. The accident has occurred only due to rash and negligent driving by the driver of the lorry owned by 1st respondent and there is no negligence on the part of the deceased. The appellants are entitled to entire award amount as compensation. At the time of accident the deceased was aged 39 years, owner of two Paddy Harvesting Machines, Partner of Kongu Finance and also an agriculturist and was earning a sum of Rs.1,50,000/- per month. The appellants proved the avocation and income of the deceased by producing Exs.P10 to P11. But the Tribunal fixed a meagre sum of Rs.10,000/- per month as notional income of the deceased. The Tribunal ought to have fixed more amount as monthly income and awarded compensation. The Tribunal failed to award any amount towards loss of love and affection and transportation and prayed for setting aside the portion of



13.It is the case of the appellants in the claim petition that on 24.01.2015, at about 01.15 A.M., while the deceased Ravi was driving the Omni Car bearing Registration No.TN 54 Z 9519 along with Selvam, Velappan and Senthilkumar from West to East on the extreme left side of the Permbalur - Ariyalur road near Kavulpalayam division road, the driver of the Tipper Lorry bearing Registration No.TN 54 D 4774 owned by 1st respondent and insured with the 2nd respondent, drove the same in a rash and negligent manner and dashed against the Omni Car driven by the said Ravi and caused the accident. To prove the same, the 1st respondent examined herself as P.W.1 and the occupants of the car were examined as P.W.2 to P.W.4 and marked F.I.R., which was registered against the driver of the lorry owned by 1st respondent. On the other hand, it is the case of the 2nd respondent that at the time of accident, while the driver of the lorry was driving the same near Kavulpalayam pirivu road, he saw the car coming in a rash and negligent manner and on seeing this, the driver of the lorry blew horn and switched the 'on' and 'off' lights to give signal to the car. But, the said Ravi, did not care about the road traffic rules and he came in the same fashion. Immediately, the driver of the lorry swerved the lorry to the extreme left side of the road and stopped the lorry. The deceased only drove the car in a rash and negligent manner and dashed against the parked lorry and invited the accident. To prove the said contention, the 2nd respondent has



not examined the driver of the lorry and has not filed any objection to the F.I.R. which was registered against the driver of the lorry and also not lodged any complaint against the deceased. The Tribunal considering the evidence of P.W.2 to P.W.4, contents of Ex.P1/F.I.R. and failure on the part of the 2nd respondent for not examining the driver of the lorry, not filing any objection to the F.I.R. which was registered against the driver of the lorry and also not lodged any complaint against the deceased, held that the accident has occurred only due to the negligence on the part of the driver of the lorry owned by 1st respondent. There is no error in the said finding of the Tribunal.

14.Further, as per Ex.R2/Motor Vehicle Inspector report, the driving license of the deceased was not produced and R.W.2 also deposed that the information sought by the Tribunal was not available in the system. Further, the driving license of the deceased was marked as Ex.P5, which was issued in the year 1989 and renewed in the year 1996. The appellants have not proved that the deceased was possessing driving license at the time of accident. The 2nd respondent relying on the judgment in C.M.A.Nos.624 & 2413 of 2016 submitted that the deceased was not possessing driving license at the time of accident and the appellants have not produced the same. The Tribunal considering the said judgment, held that the deceased was not possessing driving license at the time of accident and fixed 20% contributory negligence on the part of the deceased and the same is not correct.

15.The Hon'ble Apex Court in the judgment reported in 2018 (1) TN MAC 34 (SC) [Dinesh Kumar, J. @ Dinesh, J. Vs. National Insurance Co. Ltd. and others], held that mere failure to produce the driving license is not sufficient to draw adverse inference in respect of contributory negligence and non-production of driving license by claimant is of no consequence. In the present case, the Tribunal held that accident has occurred only due to the negligence on the part of the driver of the lorry owned by 1st respondent and fixed 20% contributory negligence on the part of the deceased is only on the ground that the appellants failed to prove that the deceased possessed driving license at the time of accident. The ratio in the said judgment is squarely applicable to the facts of the present case and the 20% contributory negligence fixed on the part of the deceased is liable to be set aside and is hereby set aside. The appellants are entitled to entire compensation awarded by the Tribunal.

16.As far as quantum of compensation is concerned, it is the case of the appellants that at the time of accident the deceased was aged 39 years, owner of two Paddy Harvesting Machines,



Partner of Kongu Finance and also an agriculturist and was earning a sum of Rs.1,50,000/- per month. The appellants proved the avocation and income of the deceased by producing Exs.P10 to P11. The appellants have not filed any salary slip, attendance register or wage register to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, the Tribunal considering the age and nature of work done by the deceased, fixed a sum of Rs.10,000/- per month as notional income of the deceased. The accident occurred in the year 2015. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, a sum of Rs.13,000/- per month is fixed as notional income of the deceased. As per Ex.P5/driving license, the deceased was aged 44 years at the time of accident. The Tribunal following the judgments of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] and 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], rightly applied multiplier '14' and granted 25% enhancement towards future prospects. There are five dependants of the deceased and the Tribunal rightly deducted 1/4th towards personal expenses of the deceased. Thus, by fixing monthly income of the deceased at Rs.13,000/-, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.20,47,500/- {Rs.16,250/- [Rs.13,000/- + Rs.3,250/- (25% of Rs.13,000/-)] X 12 X 14 X $\frac{3}{4}$ }. The Tribunal failed to award any amount towards loss of love and affection. The minor appellants 2 & 3 are entitled to a sum of Rs.40,000/- towards loss of love and affection. This Court is of the considered view that the amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed.

17.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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	15,75,000/-	20,47,500/-	Enhanced
2.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed



3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Medical expenses	1,45,810/-	1,45,810/-	Confirmed
6.	Loss of love and affection to appellants 2 & 3	-	40,000/-	Granted
	Total	Rs.17,90,810/-	Rs.23,03,310/- -	Enhanced by Rs.8,70,662/- (Rs.23,03,310/-
	80% of the award amount	Rs.14,32,648/-		- - Rs.14,32,648/-)

18. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.14,32,648/- is hereby enhanced to Rs.23,03,310/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent is directed to deposit the award amount now determined by this Court, along with 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.283 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur. On such deposit, the appellants 1, 4 & 5 are permitted to withdraw their respective share of the 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 2 & 3 is directed to be deposited in any one of the Nationalized Banks, till the minor appellants 2 & 3 attain majority. On such deposit, the 1st appellant, being the Mother of the minor appellants 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellants 2 & 3. The appellants are directed to pay the necessary Court fee on the enhanced amount of compensation. No costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar



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1. The Principal District Judge,
Motor Accident Claims Tribunal,
Perambalur.

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

+1 Cc to Mr.S.P.Yuaraj, Advocate sr 18946
+1 CC to Mr.J.Chandran, Advocate sr 18404.

C.M.A.No.832 of 2021

KV(CO)
SP(15/11/2021)