



WEB COPY



C.M.A.No.419 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

Civil Miscellaneous Appeal No.419 of 2018
[video conferencing]

1.Arayer

2.Malliga

3.Manivannan

4.Vijay

5.Thenmozhi

6.Sureshkumar

7.Minor.Surya

8.Minor.Thamaraiselvi

9.Minor.Ajith

(Minor Appellants 7 to 9 are represented by their next friend
/guardian mother Thenmozhi, 5th Appellant herein)

.. Appellants

Versus

1.Kalaiselvi

2.M/s. United India Insurance Company Ltd.,

Divisional Office No.3, Arjuna Towers,

No.248/164, Cherry Road,

Salem – 613 001.

... Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 09.01.2017 made in M.C.O.P.No.1914 of 2014, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Salem.

For Appellants : Mr.Yuaraj

For R1 : Mr.Dr.P.Jagadeesan

For R2 : Mr.C.Paranthaman



JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the portion of the award dated 09.01.2017, passed in M.C.O.P.No.1914 of 2014, on the file of the Motor Accident Claims Tribunal, III Additional District Court, Salem in so far as it relates to fixing 50% contributory negligence on the part of the driver cum owner of the two wheeler in which the fifth appellant herein was riding pillion as well as for enhancement of compensation.

2. The appellants are the claimants in M.C.O.P.No.1914 of 2014, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Salem. They have filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of Idumban, husband of the first and fifth appellants herein in the accident that took place on 10.06.2014.

3. According to the appellants, on 10.06.2014, at about 18.10 hours, the fifth appellant along with one Arumugam were traveling pillion in TVS XL Moped, bearing Registration No.TN 54 E 6991, which was driven by the deceased Idumban on the extreme left side of the road in Valasaiyur to Veeranam Main Road. When the said vehicle was nearing Thailanoor bus stop, a lorry bearing registration No.TN 54 2900 owned by the first

<https://www.mhc.tn.gov.in/judicial> respondent and insured with the second respondent was proceeding in front of



the two wheeler. According to the appellants, the driver of the lorry, due to rash and negligent driving of the vehicle had applied sudden brake without any reasonable cause. As a result of such act of the driver of the lorry, the deceased, who was driving TVS XL Moped, caught unaware and dashed against the rear side of the lorry. In the impact, the deceased sustained fatal injuries and died on the spot. Therefore, the appellants have filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation against the respondents, being the owner and insurer of the lorry respectively.

4. The 2nd respondent/Insurance Company, being the insurer of the lorry belonging to first respondent, filed counter statement before the Tribunal and denied all the averments made by the appellants. According to the second respondent, the accident had not occurred as alleged by the appellants. The driver of the lorry drove the vehicle slowly and carefully. However, the rider of the TVS XL Moped bearing Registration No.TN 54 E 6991, being the deceased, driven it negligently. In fact, at the time of accident, apart from the driver, two other persons including the fifth appellant herein were occupants of the vehicle (triples). In view of the same, when the driver of the lorry applied brake, the driver of the two wheeler could not exercise reasonable control or caution to stop the vehicle. Therefore, due to the negligent driving of the



C.M.A.No.419 of 2018

driver of the two wheeler, the accident had occurred. Further, it is stated that the driver of the lorry belonging to first respondent did not hit either the occupants of the two wheeler or the deceased who had driven the vehicle. Therefore, the driver of the lorry owned by the first respondent has not involved in the said accident and hence, the second respondent is not liable to pay any compensation to the appellants. Further, the driver of the lorry belonging to first respondent as well as the deceased Idumban were not possessing valid driving licence at the time of accident. In any event, the quantum of compensation claimed by the appellants is excessive and hence, the Insurance Company prayed for dismissal of the claim petition.

5. Before the Tribunal, the fifth appellant examined herself as P.W.1 and one Dr.K.V.Srinivasan was examined as P.W.2 and 11 documents were marked as Exs.P1 to P11. On the side of the respondents, R.W.1 to R.W.3 were examined and one document was marked as Ex.R1. In addition to that, Exs.X1 and X2 were marked as Court documents.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that both the deceased as well as the driver of the lorry belonging to first respondent, are responsible for the accident, and



C.M.A.No.419 of 2018

accordingly, the Tribunal fixed the contributory negligence in the ratio of 50% each. The Tribunal, on appreciation of the material evidence awarded a sum of Rs.10,01,000/- as compensation to the appellants and directed the second respondent/Insurance Company to deposit Rs.5,00,500/-, being 50% of the award amount, as compensation to them at the first instance and thereafter to recover it from the owner of the Lorry being the first respondent herein.

7. Not being satisfied with the award of the Tribunal in so far as it relates to fixation of 50% of liability on the deceased and for enhancement of compensation, the appellants have come out with the present appeal seeking enhancement of compensation. It is noteworthy to mention that the second respondent/Insurance Company has not filed any appeal questioning the 50% liability imposed on them.

8. The learned counsel appearing for the appellants/claimants contended that the Tribunal erred in fixing 50% contributory negligence on the part of the deceased. The accident occurred only due to the rash and negligent driving of the driver of the lorry, who, without reasonable or sufficient cause, abruptly applied sudden brake to bring the vehicle to a grinding halt. Due to such an act of the driver of the lorry, the deceased was caught unaware and hit



the rear side of the lorry. In such a circumstances, the Tribunal ought not to have fixed contributory negligence at all. Therefore, the findings rendered by the Tribunal to that effect required to be interfered with by this Court.

9. According to the counsel for the appellants, at the time of accident, the deceased was 44 years old and engaged in manufacturing of bricks and supplying the same. The deceased was earning a sum of Rs.25,000/- per month out of such avocation. However, the Tribunal fixed a meager sum of Rs.5,000/- per month as notional income of the deceased. Further, there are nine dependants to the deceased and the Tribunal ought to have given 1/5 deductions towards personal expenses, instead of making 1/3 deduction. The Tribunal also failed to award any amount towards loss of estate. The compensation awarded under the various heads are mesley and they warrant enhancement.

10. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the deceased, who was the rider of TVS XL Moped, had driven the vehicle with two other occupants (triples) including his fifth appellant, who is his second wife at the time of accident. While so, it cannot be gainsaid that the accident had occurred due to



C.M.A.No.419 of 2018

the sudden brake applied by the driver of the lorry. As the deceased was riding the two wheeler with two other occupants, he could not exercise control over the vehicle and hit the rear side of the lorry. While so, the Tribunal is wholly justified in fixing 50% negligence on the deceased.

11. As regards quantum, the appellants did not produce any material evidence to prove the avocation and income of the deceased. In the absence of any material evidence to prove the income, a sum of Rs.5,000/- per month was fixed by the Tribunal as notional income of the deceased and that by itself is excessive. In any event, the Tribunal, considering the entire materials on record, has awarded compensation under different heads, which are not meagre but they are just and proper. The learned counsel therefore prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondents and perused the entire materials available on record.

13. At the outset, it must be mentioned that in the accident, the deceased died on the spot while the fifth appellant herein (one of the pillion



C.M.A.No.419 of 2018

riders) sustained grievous injuries in the very same accident. Therefore, two

Original Petitions were filed before the Tribunal namely M.C.O.P.Nos.1913 and 1914 of 2014. This appeal is focused as against the award passed in M.C.O.P.No.1914 of 2014 relating to the death of the deceased Idumban.

14. It is the case of the appellants that the accident has occurred while the deceased Idumban was riding the two wheeler with one Arumugam and the fifth appellant as occupants (triples). While the two wheeler was proceeding from Valasaiyur to Veeranam Main Road the lorry bearing registration No.TN 54 2900 owned by the first respondent and insured with the second respondent said to applied sudden brake. In that process, the deceased, hit the lorry in the rear side and died on the spot, while the fifth appellant sustained injuries.

15. The Tribunal, considering the evidence of P.W.1, held that the accident had occurred due to rash and negligent driving by the driver of the lorry owned by first respondent as well as the deceased. In a case of this nature, especially when the two wheeler driven by the deceased hit the lorry in the rear side, it can reasonably presumed that the contribution has to be fixed equally. In fact, at the time of accident, the deceased was riding the two wheeler with two pillion rider namely one Arumugam and the fifth appellant



C.M.A.No.419 of 2018

herein. Therefore also, it can be sufficiently presumed that the deceased, due to unauthorised riding of the vehicle, could not exercise effective control over the vehicle driven by him. In such event, the contributory negligence fixed by the Tribunal is proper and this Court finds no reason to interfere with the same. Further the Tribunal after considering the fact that the first respondent vehicle was driven without Fitness Certificate in violation of policy condition ordered, the second respondent/Insurance Company to pay the award amount at the first instance and recover the same from the first respondent. This Court does not find any infirmity in the award passed 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 about 44 years and doing manufacturing bricks and supply work and was earning a sum of Rs.25,000/- per month. The appellants have not produced any documents to prove the avocation and income of the deceased. In the absence of any acceptable material evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the deceased, which is meagre. This is more so that the deceased left nine persons as his dependants. It can be reasonably presumed that the deceased would have contributed atleast Rs.10,000/- to his family while he was alive. Therefore, a



C.M.A.No.419 of 2018

sum of Rs.10,000/- per month is fixed as notional income of the deceased. The

Tribunal wrongly applied multiplier '13' instead of '14' as per the judgment of the Hon'ble Apex Court reported in **2009 (2) TN MAC 1 SC, [Sarla Verma & others Vs. Delhi Transport Corporation & another]**.

17. The Tribunal has not granted any compensation towards future prospects. At the time of accident, the deceased was aged about 44 years and as per the judgment of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others]**, 40% compensation towards future prospects has to be fixed. Taking note of the facts and circumstances of the case, this Court fix 25% of the monthly contribution of the deceased towards future prospects. There are nine dependants of the deceased, but the Tribunal erroneously deducted 1/3rd towards personal expenses, instead of deducting 1/5th. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.16,80,000/- {Rs.12,500/- [Rs.10,000/- + Rs.2,500/- (25% of Rs.10,000/-)] X 12 X 14 X 4/5 }.

18. The Tribunal failed to award any amount towards loss of estate and hence, this Court grants Rs.15,000/- towards loss of estate, which would be proper in the circumstances of this case. The Tribunal has awarded a sum of



C.M.A.No.419 of 2018

Rs.25,000/- towards funeral expenses which is highly excessive and hence the same is hereby reduced to Rs.15,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards transportation which is meagre and the same is hereby enhanced to Rs.15,000/-. The Tribunal has awarded a sum of Rs.75,000/- towards loss of consortium to the 1st appellant, which is highly excessive and hence the same is hereby reduced to Rs.40,000/.

19. The Tribunal has awarded a sum of Rs.3,50,000/- towards loss of love and affection to the appellants 2 to 4 and 6 to 9 which are also highly excessive and hence, this Court fixes Rs.40,000/- towards loss of love and affection to each of the appellants 2 to 4 and 6 to 9 and which would come to Rs.2,80,000/-. 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 Income	Rs.5,46,000/-	Rs.16,80,000/-	Enhanced
2.	Funeral expenses	Rs.25,000/-	Rs.15,000/-	Reduced
3.	Loss of consortium to the 1 st appellant	Rs.75,000/-	Rs.40,000/-	Reduced
4.	Loss of love and affection to the appellants 2 to 4 and 6 to 9 (each Rs.40,000/-)	Rs.3,50,000/-	Rs.2,80,000/-	Reduced
5.	Transportation	Rs.5,000/-	Rs.15,000/-	Enhanced



C.M.A.No.419 of 2018

6.	Loss of estate	---	Rs.15,000/-	Granted
	Total	Rs.10,01,000/-	Rs.20,45,000/-	Enhanced by
	50% of compensation	Rs.5,00,500/-	Rs.10,22,500/-	Rs.10,44,000/-

20. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,01,000/- is hereby enhanced to Rs.20,45,000/- [Rupees Twenty Lakhs and Forty Five Thousand only] together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit 50% of the award amount now determined by this Court (i.e., Rs.10,22,500/-) along with accrued interest and costs, as awarded by the Tribunal less the amount if any already deposited, 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.1914 of 2014 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Salem at the first instance and recover the same from the 1st respondent/owner of the lorry.

21. On such deposit, the first appellant, who is the first wife is entitled to a sum of Rs.2,50,000/-. The appellants 2 to 6 shall withdraw a sum of Rs.1,00,000/- each. The balance amount shall be awarded to the minor appellants equally and it shall be deposited in their name in any one of the



C.M.A.No.419 of 2018

Nationalized Banks, in any interest bearing Fixed Deposit Scheme till they attains majority. On such deposit, the fifth appellant, being the mother of the minor claimants is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimants. The appellants are directed to pay the necessary Court fee if any, for the enhanced amount of compensation. It is made clear that the appellants are not entitled to any interest for the delay period as per the order of this Court dated 16.02.2018 made in C.M.P.No.1448 of 2018 in C.M.A.SR.No.99718 of 2017. There shall be no order as to costs in the present appeal.

07.12.2021
(2/2)

ssi/rsh

Index : Yes / No

Speaking Order : Yes / No

To:

- 1.The III Additional District Judge,
Motor Accidents Claims Tribunal,
Salem.
- 2.The Section Officer,
VR Section, High Court,
Madras.



WEB COPY



C.M.A.No.419 of 2018

S.KANNAMMAL, J.

ssi

C.M.A.No.419 of 2018

07.12.2021
(2/2)