



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.87 of 2014

1.Parvathy
2.Subramaniam
3.Velmurugan
4.Sathasivam

.. Appellants/Claimants

Vs.

1.S.Gunasekaran

2.The Branch Manager
United India Insurance Company Ltd.
Tiruchengode.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 13.10.2003 made in M.C.O.P.No.109 of 1997 on the file of Motor Accident Claims Tribunal, Additional Sub Court, Tindivanam.

For Appellants	:	Mr.S.R.Sundaram
For R1	:	No appearance
For R2	:	Mr.J.Chandran

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the portion of the award fixing 50% contributory negligence on the part of the deceased and for enhancement of compensation granted by the Tribunal in the award dated 13.10.2003 made in M.C.O.P.No.109 of 1997 on the file of Motor Accident Claims Tribunal, Additional Sub Court, Tindivanam.

2.The appellants are claimants in M.C.O.P.No.109 of 1997 on the file of Motor Accident Claims Tribunal, Additional Sub Court, Tindivanam. They filed the said claim petition claiming a sum of Rs.2,00,000/- as compensation for the death of one Rajangam, who died in the accident that took place on 10.09.1996.

3.According to the appellants, on the date of accident i.e., on 10.09.1996 at about 8.00 a.m., while the deceased



Rajangam was riding in a bi-cycle on Tindivanam - Kaveripakkam Main Road, the driver of the lorry belonging to the 1st respondent drove the same in a rash and negligent manner, from Chennai to Villupuram Road, dashed against the bi-cycle and caused the accident. Due to the said impact, the deceased sustained injuries and died in the hospital. Therefore, the appellants filed the above claim petition claiming compensation against the respondents, who are owner and insurer of the lorry respectively.

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

5.The 2nd respondent/Insurance Company, insurer of the lorry filed counter statement denying the averments made in the claim petition and stated that the accident has occurred only due to negligence on the part of the deceased. The driver of the lorry belonging to the 1st respondent is not responsible for the accident. The driver of the lorry did not possess valid driving license and the lorry was not insured with the 2nd respondent at the time of accident. Therefore, the 2nd respondent/Insurance Company is not liable to pay any compensation to the appellants. The 2nd respondent/Insurance Company has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 2nd appellant, son of the deceased, examined himself as P.W.1, one Poonjolai, was examined as P.W.2, one Maran, eye-witness to the accident was examined as P.W.3 and 6 documents were marked as Exs.P1 to P6. The 2nd respondent/Insurance Company did not let in any oral and documentary evidence.

7.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 belonging to the 1st respondent as well as negligence on the part of the deceased, fixed 50% contributory negligence on the part of both the deceased as well as 1st respondent, owner of the lorry, awarded a sum of Rs.75,000/- as compensation and directed both the 1st respondent as well as 2nd respondent/Insurance Company being insurer of the said lorry to jointly and severally pay a sum of Rs.37,500/- after deducting 50% contributory negligence, as compensation to the 1st appellant and did not grant any compensation to the appellants 2 to 4, who are sons of the deceased, as they are not dependants of the deceased.



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8. Challenging the portion of the award fixing 50% 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 seeking enhancement of compensation.

9. The learned counsel appearing for the appellants contended that the accident has occurred only due to rash and negligent driving by the driver of lorry belonging to the 1st respondent. The Tribunal erroneously fixed 50% contributory negligence on the part of the deceased. At the time of accident, the deceased was a reputed Sthapathy recognised by the Government of Tamil Nadu and was earning a sum of Rs.5,000/- per month. To prove the same, the appellants have marked the certificate issued by H.R. and C.E. Board as Ex.P6. The 1st appellant, wife of the deceased was depending only on the income of the deceased and she has no other income. The Tribunal without considering the same, fixed only a meagre sum of Rs.1,500/- per month as notional income of the deceased. The amounts awarded by the Tribunal under different heads are meagre and prayed for setting aside 50% contributory negligence fixed on the part of the deceased and for enhancement of compensation.

10. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the accident has occurred only due to negligence of the deceased. The Tribunal has rightly fixed 50% negligence on the part of the deceased. The appellants have failed to produce any document to prove the income of the deceased. In the absence of any material evidence with regard to monthly income, the notional income fixed by the Tribunal is not meagre. The total compensation awarded by the Tribunal is also not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

11. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for the 1st respondent either in person or through counsel.

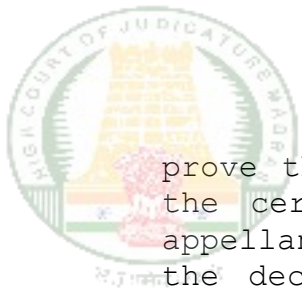
12. Heard the learned counsel for the appellants, who appeared before this Court physically as well as the learned counsel appearing for the 2nd respondent/Insurance Company through Video-conferencing/Hybrid mode and perused the entire materials available on record.

13. From the materials on record, it is seen that it is



the case of the appellants that while the deceased Rajangam was riding in a bi-cycle on Tindivanam - Kaveripakkam Main Road, the driver of the lorry belonging to the 1st respondent drove the same in a rash and negligent manner, from Chennai to Villupuram Road, dashed against the cycle and caused the accident. In the accident, the said Rajangam sustained injuries and died. To prove the said contention, the appellant examined P.W.1 to P.W.3 and marked 6 documents as Exs.P1 to P6 including F.I.R., which was registered against the driver of the lorry. From Ex.P5/the judgment of the criminal Court, it is seen that the driver of the lorry pleaded guilty and paid fine. The 1st respondent, owner of the lorry remained exparte before the Tribunal. It is the case of the 2nd respondent/Insurance Company that deceased suddenly crossed the road without seeing the lorry and invited the accident. The driver of the lorry was not responsible for the accident and the accident has occurred only due to negligence of the deceased. To prove their case, the 2nd respondent did not examine the driver of the lorry or any eye-witness. From the award of the Tribunal, it is seen that the appellants have examined P.W.3, eye-witness to the accident. The Tribunal did not accept the evidence of P.W.3 due to certain discrepancies in his evidence and Ex.P4/rough sketch. Further, P.W.3 is known person to the son of the deceased and held that he is an interested witness. The said reasoning of the Tribunal is not correct. P.W.3 denied suggestion put to him that accident occurred in the middle of the road. The Tribunal ought to have considered the evidence of P.W.3 along with Ex.P1/F.I.R., Ex.P5/judgment of the criminal Court and the fact that the respondents have not let in any evidence to disprove the case of the appellants. Even though the contents of F.I.R. and criminal Court proceedings are not binding on the Tribunal, the same can be taken into account along with evidence let in by the parties. Considering the entire materials on record, this Court is of the view that reasoning given by the Tribunal for fixing 50% negligence on the part of the deceased, is only based on assumption and surmises and the same is not correct and is erroneous. Hence, the award of the Tribunal fixing 50% contributory negligence on the part of the deceased is liable to be set aside and is hereby set aside. The entire negligence is fixed on the driver of the lorry belonging to the 1st respondent. Both the 1st respondent as well as 2nd respondent are jointly and severally liable to pay entire compensation to the 1st appellant.

14.As far as quantum of compensation is concerned, it is the contention of the appellants that at the time of accident, the deceased was a Sthapathy recognised by the Government of Tamil Nadu and was earning a sum of Rs.5,000/- per month. To



prove the avocation of the deceased, the appellants have marked the certificate issued by H.R. and C.E. Board as Ex.P6. The appellants have not filed any document to prove the income of the deceased. The Tribunal taking into consideration that the deceased will not have work on all the 30 days, fixed a sum of Rs.1,500/- per month as notional income of the deceased. The accident is of the year 1996. The notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.2,000/- per month is fixed as notional income of the deceased. As per Ex.P3/post-mortem certificate, the deceased was aged 70 years at the time of accident. The Tribunal applied multiplier '5' and deducted $1/3^{\text{rd}}$ towards personal expenses of the deceased, which are proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.80,000/- (Rs.2,000/- X 12 X 5 X $2/3$). The sum of Rs.10,000/- and Rs.5,000/- awarded by the Tribunal towards loss of consortium and funeral expenses are meagre and hence, the same are hereby enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards transportation and loss of estate and hence, Rs.2,500/- and Rs.15,000/- are awarded towards transportation and loss of estate respectively. 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 or reduced
1.	Loss of dependency	60,000	80,000	Enhanced
2.	Loss of consortium	10,000	40,000	Enhanced
3.	Funeral expenses	5,000	15,000	Enhanced
4.	Transportation	-	2,500	Granted
5.	Loss of estate	-	15,000	Granted
	Total	75,000 50% of the award amount 37,500	1,52,500	Enhanced by Rs.1,15,000/- - [Rs.1,52,500/- - Rs.37,500]



15. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.75,000/- is hereby enhanced to Rs.1,52,500/- together with interest at the rate of 9% per annum from the date of petition till the date of deposit. The appellants are directed to pay the necessary Court fee if any, on the enhanced award amount. The respondents are jointly and severally 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 eight weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st appellant is permitted to withdraw the entire amount awarded by this Court along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar

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To

1. The Additional Subordinate Judge
(Motor Accident Claims Tribunal)
Tindivanam.

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

+1cc to Mr.S.R.Sundaram, Advocate SR.No.66789
+1cc to Mr.J.Chandran, Advocate SR.No.66504

C.M.A.No.87 of 2014

RSV(CO)
GN(08/02/2022)