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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.12.2022

PRONOUNCED ON : 15.12.2022

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1168 of 2022

1. P.Thenmozhi
2. P.Dhanalakshmi (Minor)
3. P.Balamurugan (Minor)
4. T.Anjalai ... Appellants/Claimants

vs.

1. B.Gurumurthy
2. United India Insurance Co. Ltd.,
Motor Third Party Hub,
Silingi Building, No.134, Greams Road,
Chennai-600 006. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree, dated 24.01.2020 made in M.C.O.P.No.4498 of 2016 on the file of Motor Accidents Claims Tribunal (Special Sub-Court No.2, Small Causes Court), Chennai.

For Appellants : Mr.Amar Dineshbhai Pandiya

For Respondents : No appearance (R1)
Mr.P.Sankara Narayanan (R2)

**J U D G M E N T**

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Questioning the finding fixing contributory negligence and seeking enhancement of compensation awarded by the **Motor Accidents Claims Tribunal (Special Sub-Court No.2, Small Causes Court), Chennai** vide order dated 24.01.2020 in MCOP No.4498 of 2016, the claimants/legal representatives of the deceased Prabhu, have filed the present appeal.

2. For the sake of convenience, the parties are hereinafter referred to as per their ranking before the Claims Tribunal.

3. The claimants/petitioners are the legal representatives of the deceased Prabhu, who died in the road accident on 12.05.2015. As per the claim petition and the affidavit, on 12.05.2015, at about 22.30 hours, the deceased Prabhu drove the Lorry bearing Regn.No.TN-22-C-1333 on the Chennai Bunruti Road and near Kappiyampuliyur Bus Stop the 1st respondent lorry bearing Regn.No.TN-22-AS-7450 driven with a terrific speed, in a rash and negligent careless manner endangering public safety and unmindful of main road traffic, hit the lorry of the deceased. On this heavy impact, the Lorry was totally damaged and entire body of Prabhu crushed and sustained multiple grievous injuries all over the body and he died. The accident



occurred solely due to the rash and negligent driving of the driver of the 1st respondent's lorry bearing Regn.No.TN-22-AS-7450, who is alone responsible for the accident. The 2nd respondent is the insurer of the said lorry. Hence, contending that both the respondents are jointly and severally liable to pay compensation, the claimants/legal representatives of the deceased Prabhu claimed compensation of Rs.55,00,000/- before the claims Tribunal.

4. During the trial, the 1st petitioner/claimant examined herself as PW1 and occurrence witness as PW2. PW3 is the Doctor. Ex.P1 to Ex.P16 were marked. On the side of the respondents, the Head Constable was examined as RW1 and Ex.R1 and Ex.R2 were marked. The claims Tribunal has decreed the MCOP to an extent of Rs.29,10,000/- and fixing the contributory negligence at the ratio of 50:50, awarded Rs.14,55,000/- as compensation to the claimants.

5. Having not satisfied with the quantum of compensation awarded and questioning the finding regarding fixation of contributory negligence, the claimants have preferred the appeal.



6. Learned counsel for the claimants/appellants would contend that the tribunal has committed an error in fixing the contributory negligence at 50% without there being any evidence and also submitted that the notional income fixed by the claims tribunal at Rs.12,500/- for the owner-cum-driver, is too low.

7. Heard the learned counsel for the 2nd respondent/Insurance Company and perused the materials available on record.

8. The manner of the accident was spoken to by PW2. RW1 is the Head Constable, who had registered Ex.P1-FIR at the instance of the 1st respondent. From the evidence, it is seen that it is a 'head on collision', in the middle of the road and the claims tribunal has rightly come to the conclusion that the drivers of both the lorries have contributed to the accident and accordingly, fixed 50% contributory negligence, on each of them.

9. Though the learned counsel for the claimants/appellants could contend that there is no positive evidence in this connection, for the reasons best known, none of the parties have filed the rough sketch to show the scene of occurrence, so as to enable the Court to appreciate the said contention.



Even in the appeal, no document has been filed. Ex.R1-FIR, came into existence immediately after the accident and hence, on the above stated circumstances, taking into consideration of the fact that two lorries have collided each other and it was head on collision in the middle of the road, and both the drivers have died in the said accident, the trial Court has rightly fixed the negligence at 50% each on both the drivers. The respondent herein is the Insurance Company of the opposite vehicle and hence, the contributory negligence fixed by the claims tribunal appears to be just and fair and does not warrant any interference. Accordingly, the contributory negligence fixed at the ratio of 50:50 is hereby confirmed.

10. On the point of quantum of compensation, it is the specific evidence of PW1, the widow of the deceased Prabhu, that the deceased was the owner-cum-driver of the lorry. Copy of the RC book was not filed. However, Insurance policy of both the vehicles have been marked as Ex.P7 and Ex.P14. The date of the accident is on 12.05.2015. Following the ratio laid down by this Court in *Andal and others Vs. Avinav Kannan and other*, reported in **2019 (1) TN MAC 54 (DB)** dated **09.10.2018**, cost of living was taken into consideration at factor 254 and the notional income was arrived at $\text{Rs.}6500 \times 254 / 129 = \text{Rs.}12799/-$ rounded off to Rs.12500/-.



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11. On the date of the accident, the deceased Prabhu was aged about 32 years and hence, following the principles laid down by the Hon'ble Apex Court in Sarla Varma's case [*Sarla Varma and Others Vs. Delhi Transport Corporation, reported in 2009 ACJ 1298*], multiplier '16' is adopted and considering the number of dependants [four], 1/4th deduction was made. Further, future prospects of 40% was also granted by the claims tribunal and the compensation awarded under other heads also appears to be reasonable.

12. Therefore, the finding of the claims tribunal regarding fixation of contributory negligence at the rate of 50% each on both the drivers of the lorries, taking into consideration the 'head on collision' and also the fact that the accident had happened in the middle of the road and the quantum of compensation as described supra, appears to be just and fair.

13. In view of the above discussion, the order passed by the **Motor Accidents Claims Tribunal (Special Sub-Court No.2, Small Causes Court), Chennai** vide order dated 24.01.2020 in MCOP No.4498 of 2016, is confirmed and the Civil Miscellaneous Appeal stands dismissed. No Costs.



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Index :Yes/No

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To

The Motor Accidents Claims Tribunal,
Special Sub-Court No.2,
Small Causes Court, Chennai



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RMT.TEEKAA RAMAN, J.

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