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C.M.A.No.857 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 01.07.2022

CORAM

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

C.M.A.No.857 of 2022

1.K.Kanchana  
2.S.Chandrasekar  
3.D.Nagabooshanam  
4.S.Gnanaguru

... Appellants /Petitioners

Vs

1.A.Amsa  
2.S.Manikandan  
3.The Manager  
Chola M/s General Insurance Company Limited  
Vellore.

... Respondents/Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1989 (Act IV of 1939) praying to set aside the portion of the order passed in M.C.O.P.No.710 of 2017 dated 05.04.2021 on the file of the Motor Accident Claims Tribunal / I Additional District and Sessions Court, Vellore, to extend the fixation of the award amount and consequently to enhance the award amount of Rs.5,72,000/- and to allow the CMA as prayed for.

For Appellants : Mr.J.Pradeep

1/7



C.M.A.No.857 of 2022

WEB COPY

For Respondents : Mr.B.Manoharan [R1]  
Ms.Harini for M/s.M.B.Gopalan  
Associates for R3  
R2 – Served (No appearance)

### **JUDGEMENT**

The claimants have filed the above appeal seeking enhancement of compensation granted in M.C.O.P.No.710 of 2017 on the file of the Motor Accident Claims Tribunal (I Additional District and Sessions Judge) Vellore.

2. The facts in brief are as follows:-

The appellants and the first respondent are the children of one Rukkammal, who died in a road accident on 26.03.2017. It is the case of the appellants that on the said date, their mother Rukkammal, who was 72 years old, running a juice shop and earning a monthly income of Rs.50,000/-, had crossed the Bangalore - Chennai National Highways Road. While so, an auto bearing Registration No.TN 73 C 7029 driven in a rash and negligent manner, hit the said Rukkammal which resulted in her sustaining severe

2/7



C.M.A.No.857 of 2022

head injuries. She was rushed to CMC Hospital, Vellore, but, however, she succumbed to her injuries.

3. The auto was driven by the first respondent and the second respondent is the owner of the auto. The third respondent is the insurer. They would contend that the accident had occurred only on account of the rash and negligent driving of the second respondent's auto. The first and second respondent remained absent and was set *ex-parte*.

4. The third respondent-Insurance Company had filed their counter denying the income of the deceased and also the fact that the accident had occurred on account of the negligence on the part of the driver of the second respondent's auto. The third respondent would contend that the accident had occurred only on account of the negligence of the deceased, who has crossed the National Highways at a place not meant for crossing. Therefore, the Insurance Company is not liable to compensate the appellants. Further, they contended that the driver of the second



C.M.A.No.857 of 2022

WEB COPY

respondent's auto did not have a valid driving licence, and therefore, there is a violation of the policy conditions.

5. The Tribunal below, on considering the evidence, held the deceased could have contributed to the accident and had apportioned her negligence at 20%. Ultimately, a sum of Rs.3,40,000/- was awarded and the Insurance Company was directed to pay 80% of the said amount i.e., Rs.2,72,000/- and had directed the third respondent-Insurance Company to pay the amount and recover the same from the second respondent, since the second respondent had handed over the vehicle to a person, who has not duly licenced to drive the vehicle. Challenging the award on the ground that the Tribunal had assessed a contributory negligence 20% on the deceased, the appellants are before this Court.

6. Heard the learned counsel on either side and perused the materials available on record.



C.M.A.No.857 of 2022

WEB COPY

7. The fixation of the notional income and the award of the compensation under various heads appear to be reasonable and does not require any interference from this Court.

7. As regards the contributory negligence of 20%, it is seen that the deceased was crossing the road on a South to North direction and the Auto was coming in the East to West direction. That apart, the accident had taken place at 3.45 p.m. in the evening. Therefore, the auto driver, if he had driven the same carefully, would have seen the deceased at a distance and could have slowed the vehicle. However, the deceased had crossed the national highways where the flow of traffic is heavy and where most vehicles travel at great speeds. The deceased has crossed the road knowing fully well the dangers involved. Further, she has crossed at a place where pedestrian crossing is not provided. Therefore, the negligence is assessed on the deceased at 10% instead of 20% as assessed by the Tribunal.



C.M.A.No.857 of 2022

WEB COPY

8. In view of the above, the third respondent-Insurance Company shall be liable to pay a compensation of Rs.3,06,000/- to the appellants/claimants and recover the same from the second respondent herein being owner of the vehicle. In other respects, the Award of the Tribunal is hereby confirmed. Accordingly, the Civil Miscellaneous Appeal is modified to the above extent. No costs. Consequently, connected miscellaneous petition is closed.

**01.07.2022**

Index : Yes/No  
Speaking order/non-speaking order  
srn

To

1. The I Additional District and Sessions Judge, Vellore.
2. The Section Officer, V.R.Section, High Court, Madras



WEB COPY



*C.M.A.No.857 of 2022*

**P.T.ASHA, J.,**

srn

**C.M.A.No.857 of 2022**

**01.07.2022**