IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.3976 of 2019
and C.M.P.No.22487 of 2019

The Manager
M/s.IFFCO-TOKIO General Insurance Co.Ltd
No.138/1, II Floor, LMR Shopping Arcade,
Opp.MGM Theatre, Namakkal. ...Appellant

Vs.

1.Bhakyalakshmi
2.Minor. Saravanan,
3.Minor.Devi Sree
4.Padmavathi
5.Senthil Kumar ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 04.12.2018 made in

M.C.O.P.No.117 of 2016 on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Court, Chidambaram.

For Appellant : Mr.S.Arun Kumar

For R1 to R4 : Mr.T.Gopinath

J U D G M E N T

(Judgment of the Court was delivered by SUNDER MOHAN,J.)

The above appeal has been filed challenging the award passed by Motor Accident Claims Tribunal, II Additional District and Sessions Court, Chidambaram in M.C.O.P.No.117 of 2016 dated 04.12.2018 awarding compensation to the respondents 1 to 4 herein.

2.The Respondents 1 to 4 are the wife, minor children and mother of the deceased Mr.Chandramohan.

3.It is the case of the respondents 1 to 4 that on 23.05.2016 at about 8.00 p.m when the deceased Mr.Chandramohan was riding two wheeler bearing

Reg.No.PY 01 AE 1197 on the extreme left side of the road, near MRK weigh bridge the deceased dashed on the container lorry bearing Reg.No.TN 88 A 2267 which was parked on the left side of the road without any light and caused the accident. In the said accident the deceased sustained injuries and died. The respondents 1 to 4 therefore made a claim of Rs.50,00,000/- (Rupees Fifty Lakhs only) towards compensation.

4.The fifth respondent remained exparte before the Tribunal.

5.The appellant filed a counter stating that the accident was not due to the negligent act of the driver of the container lorry and it was due to negligent act of the deceased. The respondents 1 to 4 have not established the monthly income of the deceased. The deceased was not wearing the helmet at the time of the accident.

6.Before the Tribunal, the respondents 1 to 4 examined first respondent as P.W.1 and one Vallalar as P.W.2 who is said to be an eye witness and marked eleven documents as Ex.P.1 to Ex.P.11. The appellant examined two witnesses R.W.1 and R.W.2 and marked three documents as Exs.R.1 to R.3.

7.The Tribunal after considering the pleadings, evidence and documents on record held that the accident occurred due to the negligent act of the 5th respondent, driver of the container lorry and awarded a total compensation of Rs.43,31,676/- to the respondents 1 to 4.

8.Aggrieved over the said award, the appellant had preferred the above appeal challenging the finding on negligence and the quantum awarded by the Tribunal.

9.The learned counsel for the Appellant submitted that the Tribunal ought to have seen that the deceased also was liable for contributory negligence. P.W.2 was examined to show that the lorry bearing Reg. No.TN 88 A 2667 was parked in a no parking area. He would admit that he saw the stationary lorry. The learned counsel submitted that it P.W.2 could see the lorry even though it was a night time, then the deceased also could have seen the lorry and only since he rode the motor cycle in a rash and negligent manner, the accident took place. As far as quantum of compensation is concerned, the learned counsel for the appellant submitted that the Tribunal ought to have fixed the monthly income of the deceased as Rs.23,990/- relying on the evidence of PW1, wife of the deceased. The deceased was aged 45 years at the time of accident. The respondents 1 to 4 are entitled to only 30% enhancement towards future prospects. The Tribunal erred in granting the future prospects at 40% and prayed for allowing the appeal by reducing the compensation awarded by the Tribunal.

10.The learned counsel for the respondents 1 to 4 submitted that the Tribunal had considered the oral and documentary evidence let in by the respondents 1 to 4 and rightly concluded that the accident took place only due to the negligent act of the driver of the lorry in parking the vehicle in a no parking area in a National Highway. The respondents 1 to 4 have established that the accident took place because the deceased was blinded on account of the head lights of vehicles coming on the opposite direction and hence, he could not see the parked lorry. He could not have excepted the lorry being parked in a no parking area and hence there is no negligence on his part. He further submitted that the compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

11.We considered the submissions made by the learned counsels on either side and perused the pleadings, evidence and documents on record.

12.The evidence of P.W.2, eye witness clearly establishes that the deceased was blinded due to the bright head lights of the vehicle coming on the opposite side. It is P.W.2's evidence, that he was riding another two-wheeler about 50 feet behind the rider of the two wheeler. The Appellant/Insurance company had not dis-lodged their evidence in any manner in the cross examination. However, the appellant had not let in any evidence contrary to the evidence let in by the respondents 1 to 4 as regards the negligence of the driver of the container lorry. The rough sketch clearly shows that the lorry was not parked on the National Highway. The Appellant had not let in any evidence to show that it was a designated parking space. The rough sketch indicates that it was not parked in the designated parking area. The appellant has not examined the driver of lorry to let in contra evidence. The R.W.2 is examined to show that the police had closed the case showing the deceased as the person who is the reason for the negligent act and hence closed the case as Charge Abated. During the cross examination, the

R.W.2, had admitted that the lorry was not parked in the designated parking area and the accident took place in the by-pass road. Therefore, we are of the view that the final report filed by the Police cannot be accepted and the same is not binding. The evidence of P.W.2 and the other documents on record, established that the accident took place on account of negligent act of the driver of the lorry, in parking the vehicle in a no parking area in a National Highway. Therefore, we hold that Tribunal is right in concluding that the driver of the lorry was responsible for the accident and the appellant is liable to pay compensation.

13.As regards quantum of compensation awarded by the Tribunal, it is the contention of the learned counsel for the appellant that the Tribunal had erroneously fixed the notional monthly income of the deceased at Rs.23,990/- relying on the evidence of PW1, wife of the deceased and granted 40% enhancement towards future prospects. From the materials on record, it is seen that at the time of accident, the deceased was working as a Grade II Deemed Electrician in Annamalai University. The Tribunal, taking into consideration of the salary slip of the deceased for the month of April 2016 marked as Ex.P8, coupled with the evidence of PW1, wife of the deceased, rightly fixed the monthly income of the deceased as Rs.23,390/-. The deceased was aged about 45 years at the time of the occurrence and there are four dependents. Following the Judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC (Sarala Verma and others vs. Delhi Transport Corporation and another), the Tribunal has rightly applied multiplier 14 and deducting 1/4th towards personal expenses of the deceased, awarded compensation after deducting applicable income tax. However, the Tribunal has granted 40% enhancement towards future prospects. Since, the deceased was aged 45 years and in permanent employment, as per the judgment of the Hon'ble Apex Court in 2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs. Pranay Sethi and others], the future prospects should be taken as 30%. Thus, the loss of earning capacity is modified to Rs.38,45,842/- [2,11,310 + 63393 (30% of 211310) x 14]. The compensation awarded by the Tribunal under other heads are just and reasonable and hence the same are confirmed. Thus, the compensation awarded under 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	41,41,676/-	38,45,842/-	Reduced
2.	Loss of consortium for claimants 1 to 4	1,60,000/- (40,000 X 4)	1,60,000/- (40,000 X 4)	Confirmed
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Loss of funeral expenses	15,000/-	15,000/-	Confirmed
	Total	Rs.43,31,676/-	40,35,842/-	Reduced by Rs.2,95,834/-

14.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.43,31,676/- is hereby reduced to Rs.40,35,842/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The Appellant/Insurance Company 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. On such deposit, the respondents 1 & 4 are permitted to withdraw their respective share of the award amount now determined by this Court on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor respondents 2 & 3 are directed to be deposited in any one of the nationalised bank till the minors attain majority. The 1st respondent, mother of the minor respondents 2 & 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minors. The Appellant/Insurance Company is permitted to withdraw the excess amount, lying in the credit of M.C.O.P.No.117 of 2016, if the entire amount has already been deposited by them. Consequently, connected miscellaneous petition is closed. No costs.

(V.M.V., J) **(S.M., J)**
08.11.2022

dk

To
1.Motor Accidents Claims Tribunal,
II Additional District and Sessions Court
Chidambaram

2.The Section Officer
VR Section
High Court of Madras
Chennai – 600 104.

V.M.VELUMANI,J.
and
SUNDER MOHAN,J.
dk

C.M.A.No.3976 of 2019
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V.M.VELUMANI, J.
and
SUNDER MOHAN, J.

(Order of the Court was made by V.M.VELUMANI,J.)

At the instance of the learned counsel appearing for the appellant, this matter is posted today under the caption "For Being Mentioned".

2. Heard the learned counsel for both sides.

3. It is represented by the learned counsel for the appellant that though they have raised their objection in the grounds regarding fixation of monthly income by the Tribunal relying on the evidence of PW1, wife of the deceased, in Para 9 of the order of this Court dated 08.11.2022, it has been mentioned as if the appellant agrees to fix the monthly income of the deceased at Rs.23,990/- relying on the evidence of PW1, wife of the deceased. It is further submitted by the learned counsel that in Para 13 of the order of this Court dated 08.11.2022, the monthly income of the deceased has been wrongly mentioned as Rs.23,390/- as against Rs.23,990/-.

4. In view of the above, Para 9 & 13 of the order of this Court dated 08.11.2022 are rectified as follows -

> *9.The learned counsel for the Appellant submitted that the Tribunal ought to have seen that the deceased also was liable for contributory negligence. P.W.2 was examined to show that the lorry bearing Reg. No.TN 88 A 2667 was parked in a no parking area. He would admit that he saw the stationary lorry. The learned counsel submitted that* ***if*** *P.W.2 could see the lorry even though it was a night time, then the deceased also could have seen the lorry and only since he rode the motor cycle in a rash and negligent manner, the accident took place. As far as quantum of compensation is concerned, the learned counsel for the appellant submitted that the Tribunal ought* ***not*** *to have fixed the monthly income of the deceased as Rs.23,990/- relying on the evidence of PW1, wife of the deceased. The deceased was aged 45 years at the time of accident. The respondents 1 to 4 are entitled to only 30% enhancement towards future prospects. The Tribunal erred in granting the future prospects at 40% and prayed for allowing the appeal by reducing the compensation awarded by the Tribunal.*
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> *13.As regards quantum of compensation awarded by the Tribunal, it is the contention of the learned counsel for the appellant that the Tribunal had erroneously fixed the notional monthly income of the deceased at Rs.23,990/- relying on the evidence of PW1, wife of the deceased and granted 40% enhancement towards future prospects. From the materials on record, it is seen that at the time of accident, the deceased was working as a Grade II Deemed Electrician in Annamalai University. The Tribunal, taking*

into consideration of the salary slip of the deceased for the month of April 2016 marked as Ex.P8, coupled with the evidence of PW1, wife of the deceased, rightly fixed the monthly income of the deceased as ***Rs.23,990/-****. The deceased was aged about 45 years at the time of the occurrence and there are four dependents. Following the Judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC (Sarala Verma and others vs. Delhi Transport Corporation and another), the Tribunal has rightly applied multiplier 14 and deducting 1/4 th towards personal expenses of the deceased, awarded compensation after deducting applicable income tax. However, the Tribunal has granted 40% enhancement towards future prospects. Since, the deceased was aged 45 years and in permanent employment, as per the judgment of the Hon'ble Apex Court in 2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs. Pranay Sethi and others], the future prospects should be taken as 30%. Thus, the loss of earning capacity is modified to Rs.38,45,842/- [2,11,310 + 63393 (30% of 211310) x 14]. The compensation awarded by the Tribunal under other heads are just and reasonable and hence the same are confirmed. Thus, the compensation awarded under the Tribunal is modified as follows:*

5. Registry is directed to issue the fresh order copy, after carrying out the above corrections. The other contents of the order of this Court dated 08.11.2022 shall stand unaltered.

(V.M.V., J.) (S.M., J.)
17.04.2023

rgr/kj

V.M.VELUMANI, J.
and
SUNDER MOHAN, J.

rgr/kj

C.M.A. No.3976 of 2019
and C.M.P.No.22487 of 2019

17.04.2023