



C.M.A.No.430 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 05.12.2022	Pronounced on 22.12.2022
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

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1.S.Saraswathi
W/o.Late Ravi @ Saravanan

2.Minor Kavin,
S/o.Late Ravi @ Saravanan

3.Minor Jothis,
S/o.Late Ravi @ Saravanan
(Minors Rep. by their Mother and
Natural guardian S.Saraswathy, the 1st Appellant)

4.Ramayammal
W/o.Late Chenniappan

All are residing at
Venkatachalam Pettai,
Vandipettai, Gobichettipalayam,
Erode Taluk.

... Appellants

Vs.

1.A.Shahul Hameed,
S/o.A.Abdul Rahman,
10, Nethaji Street,
Erode – 638 001.



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2.R.Natarajan,
S/o.Ramasamy,
3/1, Vaikkal Street,
Pasur, Erode Taluk & District.

3.Shriram General Insurance Company Limited,
10003-E, 8, Ritco Industrial Area,
Sitapura, Jaipur,
Rajasthan – 302 022
(Policy No.10003/31/11/253659)

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the fair and decreetal order dated 12.09.2013 passed in MCOP.No.310 of 2011 on the file of the Motor Accident Claims Tribunal, (II Addl. District Court) Erode for enhancement of compensation.

For Appellants : Mr.S.Sriram
for Mr.K.Govi Ganesan

For Respondents : Mr.K.Poomalai (for R3)

R1 & R2 - No appearance

J U D G M E N T

The Appeal has been filed against the fair and decreetal order dated 12.09.2013 passed in MCOP.No.310 of 2011 on the file of the Motor Accident Claims Tribunal, (II Addl. District Court) Erode.



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2.The claim Petitioners are the Appellants herein, seeking enhancement of compensation awarded in MCOP.No.310 of 2011, on the point of quantum as well as negligence. For the sake of convenience, they are referred to as per their ranking before the trial Court.

3.The legal representatives of the deceased Ravi @ Saravanan filed MCOP.No.310 of 2011, seeking compensation for the death of husband of the 1st Petitioner. The 3rd Respondent/Insurance Company filed counter statement denying negligence *inter alia* contended that on 01.03.2011 at about 10.00 P.M. near Amman Arts and Science College, near Chithode, Erode to Sathy East- West road, the Maruthi Car bearing Reg. No.TN 33 AF 2262 was towed by another vehicle bearing Reg. No.TN 24 W 5240 from West to East direction and when the joining rope was cut, the Maruthi car was stopped in the middle of the road and the 1st respondent being the driver of the car, did not take any care to bring the car to the northern side of the road or put all the indicator lights on or put the triangular red reflectors in both front and back side of the car to indicate that the car was under repair and was parked in the middle of the road. At that time, the deceased Ravi @ Saravanan was riding his bike bearing



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Reg.No.TN 36 K 4964, slowly from West to East and dashed against the parked car on its back side.

4.During the trial, on the side of the claim Petitioners, PW1 & PW2 were examined & Ex.P.1 to Ex.P.15 were marked and on the side of the Respondents, RW1 was examined and Ex.R.1 & Ex.R.2 were marked.

5.Heard the learned counsel appearing on behalf of the claim Petitioners/Appellants and the learned counsel appearing on behalf of the 3rd Respondent.

6.The trial Court based on the oral and documentary evidence of PW1 & RW1 and Ex.R1 & Ex.R.2 come to the conclusion that at the time of accident, the deceased rode the two wheeler under the influence of alcohol and hit the Maruthi Car from behind, which was parked in the middle of the road, as there was mechanical problem in the car. The same was towed by another vehicle and since the connecting rope got cut, the Maruthi vehicle was parked in the middle of the road, without any indicators about parking. The accident was taken place at 10 pm on 01.03.2011. The Tribunal held that since the 1st



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Respondent/driver of the vehicle and the 2nd Respondent/owner of the vehicle and the 3rd Respondent/Insurance Company, took the plea that the Maruthi vehicle was parked in the middle of the road, has fixed 50% contributory negligence on the part of the driver of the Maruthi vehicle and 50% contributory negligence on the part of the deceased, as he has not noticed the parked vehicle in the middle of the road and further based upon Ex.R1 that there was smell of alcohol.

7.Learned counsel for the claim Petitioners/Appellants would contend that in the absence of any positive evidence to show that the deceased was riding the vehicle under the influence of alcohol, the trial Court has committed error in fixing 50% contributory negligence, assumes significance. In Ex.R1, it is mentioned that the smell of alcohol, but there is no positive evidence to show that he was riding the vehicle under the influence of alcohol and hence, I find that 50% contributory negligence fixed on the deceased is too high and the same is reduced to 25%. The Tribunal has rendered a specific finding that during night hours, Maruthi Car of the first Respondent was parked in the middle of the road. In fact, it was abandoned, being dragged on by another vehicle and stopped in the middle of the road, without any indicators and without any



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triangular red reflector boards and hence, I find that the negligence on the part of the driver of the offending vehicle (Maruthi Car) be fixed at 75%.

8. On the quantum of compensation, the trial Court has taken the monthly income of the deceased at Rs.4,500/- and as pleaded by the claim Petitioners, after deducting 1/3rd towards his personal expenses, the monthly income was fixed at Rs.3,000/-. The same is just and proper. The age of the deceased at the time of the accident is 32 years and as per the judgment of the Hon'ble Supreme Court in the case of *Sarla Verma & Others .Vs. Delhi Transport Corporation & another*, reported in *2009 (2) TNMAC 1 (SC)*, right multiplier is “16” and the same is adopted and hence, the pecuniary loss sustained by the claim Petitioners are re-assessed as follows:

$$\text{Rs.}3000 \times 12 \times 16 = \text{Rs.}5,76,000/-$$

9. The 1st Petitioner as a wife of the deceased is entitled for Rs.40,000/- towards filial of consortium, Rs.80,000/- is awarded towards loss of love and affection to other claim Petitioners, Rs.15,000/- is awarded towards funeral expenses, Rs.15,000/- is awarded towards loss of estate and a sum of



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Rs.44,000/- is awarded towards medical expenses.

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<i>S.No.</i>	<i>Head</i>	<i>Amount (Rs.)</i>
1	Loss of income	576000
2	Filial of consortium	40000
3	Loss Love and affection	80000
4	Funeral expenses	15000
5	Loss of Estate	15000
6	Medical expenses	44000
	Total Compensation	770000

In total, the claimants are entitled to a sum of Rs.7,70,000/- (Rupees seven lakh and seventy thousand only) and the interest awarded by the Tribunal at the rate of 7.5% per annum is also confirmed.

10. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the compensation from Rs.7,60,000/- to Rs.7,70,000/- to the extent indicated above. No Costs.

(ii) the 3rd Respondent/insurance company on behalf of the 1st Respondent is



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directed to deposit 75 % of the award amount of Rs.5,77,500/- [Rs.7,70,000/- x 75/100], with interest and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) on such deposit being made, all the claim Petitioners/Appellants are entitled to get their share in the enhanced award amount, as per the ratio of apportionment made by the Tribunal. The claim Petitioners 1 & 4/Appellants 1 & 4 are permitted to withdraw their entire share with proportionate interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal. The claim Petitioners 2 & 3/Appellants 2 & 3 are minors. The share of the minors shall be kept in a interest bearing fixed deposit in any of the nationalised bank, till they attain majority. The 1st claim Petitioner/1st Appellant, who is the guardian of minors, is permitted to withdraw the interest from the deposit of the minors once in three months.

(iv) the appellants/claimants are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

22.12.2022



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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

sai

To

The Presiding Officer,
Motor Accident Claims Tribunal,
II Additional District Court,
Erode.



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RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Judgment made in

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Dated: 22.12.2022