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C.M.A.No.1166 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2022

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1166 of 2017

1.Annamalai

2.Peramayee

... Appellants

Vs.

1.Ravichandran

2.Murugan

3.Royal Sundaram Allianz Insurance Company Ltd.,

Office at No.8/H 1, Mangalam Building,

Four Roads, Salem – 636 009

... Respondents

(The respondents 1 & 2 remained ex parte before the Tribunal)

PRAYER: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.02.2015 passed in MCOP.No.478 of 2011 on the file of the MACT / IV Additional District Court, Bhavani, Erode District.

For Appellants

: Mr. Ma.P.Thangavel

For Respondents

: R1 & R2 - Set Exparte

before the Tribunal

Mr.K.Vinod for R3

for Mrs.Elveera Ravindran



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J U D G M E N T

The Civil Miscellaneous Appeal is preferred against the Judgment and

Decree dated 23.02.2015 passed in M.C.O.P.No..478 of 201 on the file of the MACT / IV Additional District Court, Bhavani, Erode District.

2. The Appellants/claimants, unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award, has preferred this appeal seeking for enhancement.

3. The Motor Accidents Claim Tribunal, under the impugned award, has awarded a compensation of Rs.5,50,900/- together with interest and costs to the Appellants/claimants which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of Dependency (3000x12x17)	6,12,000/-
Loss of love and affection	1,50,000/-
For Funeral Expenses	10,000/-
For transport expenses	10,000/-



<i>Heads</i>	<i>Award Amount (Rs.)</i>
For damage to clothing and articles	5,000/-
Total	7,87,000/-
After deducting 30% of the award amount	2,36,100/-
70% of contributory negligence	5,50,900/-

4. One fateful day i.e., on 04.05.2011 at about 03.00 p.m., while the deceased Settu was driving his Yamaha Crux Bike bearing Regn.No.TN-32-W-9821, the 1st respondent lorry bearing Regn.No.TN-52-Z-6576 coming in a rash and negligent manner from the opposite direction, hit against the bike due to which, Settu died at the spot itself due to the injuries all over his body, as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. The claimants who are the parents of the deceased had preferred a claim before the Motor Accidents Claims Tribunal seeking compensation for the death of their son. The Motor



Accident Claims Tribunal fixing 30:70 percentage of contributory negligence on the deceased and 1st respondent/driver respectively, had directed the Insurer/3rd respondent to pay a sum of Rs.5,50,900/- to the Appellants/claimants with interest and costs.

5. Before the Tribunal, the Appellants/claimants has examined two witnesses as P.W.1 and P.W.2 and filed 7 documents which were marked as Ex.P1 to Ex.P7. On the side of the respondents, two witnesses were examined as RW1 and RW2 and four exhibits were marked as Ex.R1 to Ex.R4 before the Tribunal. The respondents 1 and 2 were set exparte before the Tribunal.

6. The learned counsel appearing on behalf of the Appellants/claimants mainly contended that the compensation awarded by the Motor Accident Claims Tribunal is inadequate. It is contended that the deceased died due to the rash and negligent driving of the driver of the 2nd respondent vehicle which has been insured with the 3rd respondent/Insurance



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Company. The future prospectus of the deceased is not taken into consideration by the Tribunal. As per the rulings of Apex Court in **2013 (4) CTC 252, Jiju Kuvila Vs. Kunjama Mohan**, there cannot be any negligence to be fixed based on the observation mahazar or rough sketch. It is well settled law that the criminal court records, will not bind the Tribunal to arrive independent conclusion with regard to negligence, based on the evidence let in by the parties. The Tribunal ought to have added the future prospects of 50% of actual salary in view of Apex Court ruling in **Santhosh Devi** reported in **2013(2) TNMAC 66 (SC)** and the proper multiplier is '17' based on his age of 27 years. Therefore, 30% contributory negligence is unwarranted and liable to be set aside in *limini* and he prays that the compensation granted by the Tribunal is to be enhanced.

7. The accident occurred on 04.05.2011 at about 03.00 hours, near Good shepherd School, when the deceased was proceeding towards Chittar



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to Kuthiraikalmedu. Due to the accident, the deceased sustained grievous injuries and died on the spot. Thereafter, the claim petition was filed and the Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties. As far as the negligence is concerned, the driver of the Lorry bearing Registration No.TN-52-Z-6576 had driven the vehicle in a rash and negligent manner and caused the accident. But, the Tribunal has committed grave error in fixing the contributory negligence on the deceased Settu at 30%.

8. With regard to the quantum of compensation, the Tribunal has awarded a total compensation of Rs.7,87,000/-. In this regard, it is contended that the compensation awarded by the Tribunal is very meagre. Therefore, the same is to be enhanced.

9. The learned counsel appearing on behalf of the third respondent/Insurance Company refuted the contention raised by the



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appellants by stating that the accident occurred due to the carelessness of the deceased who without noticing the oncoming lorry from the opposite direction came in the line of motion of the lorry and caused the accident. It is a head on collision. The claim petition suffers from non-joinder of necessary parties. The rider of the motor cycle was not having the valid and effective driving license to ride the vehicle at the time of accident and the vehicle was not insured with the Insurance Company. Taking of an uninsured vehicle by an unlicensed rider in a public place is an offence as per the MV Act and Rules. Hence, the rider of the vehicle had violated the policy conditions. Moreover, the Tribunal has awarded a reasonable compensation and there is no error as such. Thus, the award given by the Tribunal is to be confirmed and the appeal is to be dismissed.

10. Heard both sides and perused the materials available on record.

11. On perusal of records, it is seen that as far as the negligence is concerned, the Tribunal has fixed the contributory negligence on the part of

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the deceased and 1st respondent as 30% and 70% respectively. It is revealed from the records that the deceased also contributed for the cause of accident.

However, the ratio fixed by the Tribunal is not correct. Hence the ratio of negligence needs to be modified. Therefore, this court fix the ratio of contributory negligence as 20% and 80% on the driver of the lorry and the rider of the bike respectively.

12. Insofar as the other heads such as 'funeral expenses' 'transport expenses' and damage to clothing and articles' of the compensation are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and it does not call for any interference by this Court. The award under the head of 'future prospectus' is to be added.

13. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.5,50,900/- to Rs.9,61,800/- in the following manner:



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<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount awarded by this Court (Rs.)</i>
Loss of Dependency	6,12,000/-	-----
Future prospectus (4200x12x17)	-----	8,56,800/-
Loss of love and affection	1,50,000/-	80,000/-
Funeral Expenses	10,000/-	10,000/-
Transport Expenses	10,000/-	10,000/-
Damage to clothing and articles	5,000/-	5,000/-
Total	7,87,000/-	9,61,800/-

14. Conclusion:

(i) In the result, this appeal is **allowed**.

(ii) The Award of the Tribunal is modified enhancing the compensation amount from Rs.7,87,000/- to Rs.9,61,800/-. The said amount shall carry the same rate of interest as awarded by the



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Tribunal, namely, 7.5% per annum.

(iii) The Insurance Company is directed to deposit the modified amount i.e., Rs.9,61,800/- along with interest and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.478 of 2011 within a period of eight weeks from the date of receipt of a copy of this judgement.

(iv) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the Appellants/claimants through RTGS within a period of two weeks thereafter. The appellants are permitted to withdraw the award amount in equal share after filing proper application before the Tribunal. No costs.

19.12.2022

Index : Yes/No
Internet: Yes/No
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To

1.The Motor Accident Claims Tribunal,
IV Additional District Court,
Bhavani, Erode District.

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



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A.A.NAKKIRAN, J.

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