



C.M.A. No.1265 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE S.SOUNTHAR**

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Revathi

.. Appellant

Vs.

1.Ravikumar

2.Chandra Sekara Bharathi

3.Royal Sundaram Alliance Insurance Company Limited,
Madurai.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.09.2019, made in M.C.O.P. No.260 of 2018, on the file of the Sub Court, (Motor Accident Claims Tribunal) Kangeyam, Tiruppur District.

For Appellant : Mr.M.Lokesh

For R3 : Ms.C.Harini
for M/s.M.B.Gopalan Associates



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J U D G M E N T

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

This appeal has been filed against the award of the Tribunal dated 27.09.2019, made in M.C.O.P. No.260 of 2018, on the file of the Sub Court, (Motor Accident Claims Tribunal) Kangeyam, Tiruppur District.

2.The appellant-claimant filed M.C.O.P. No.260 of 2018, on the file of the Sub Court, (Motor Accident Claims Tribunal) Kangeyam, Tiruppur District, claiming a sum of Rs.30,00,000/- (claim amount amended vide order of this Court dated 04.03.2020 made in C.M.P.No.27384 of 2019 in C.M.A.SR.154846 of 2019) as compensation for the death of one Arun, who died in the accident that took place on 13.07.2014.

3.According to the appellant, on the date of accident, at about 8.30 p.m., when the deceased Arun was riding his Motorcycle bearing Registration No.KL-39-0839 from East to West of Kangeyam to Palayakottai road, on the left hand side of the road with minimum speed and utmost care and cautiousness. Near Chettiyar Maligai Shop, the 1st respondent/driver of



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the Lorry bearing Registration No.TN-67-F-4458, owned by the 2nd respondent who was driving the same in a rash and negligent manner in front of the Motorcycle, abruptly stopped the vehicle without any signal, as a result of which the deceased Arun who was coming behind the Lorry dashed on the backside of the Lorry. In the accident, the said Arun sustained grievous injury and died on the spot. The accident occurred only due to rash and negligent driving of Lorry by the 1st respondent and hence, the appellant filed claim petition claiming compensation against the respondents as driver, owner and insurer of the Lorry respectively.

4.The respondents 1 and 2 remained exparte before the Tribunal.

5.The 3rd respondent-Insurance Company filed counter statement and denied all the averments made by the appellant in the claim petition. According to the 3rd respondent-Insurance Company, the accident occurred when the deceased Arun, who was riding the Motorcycle in a zigzag manner, without driving license, Insurance and without wearing helmet at an



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uncontrollable speed, lost balance and hit behind the Lorry driven by the 1st respondent. The accident has occurred only due to the negligent riding of Motorcycle by the deceased Arun. Hence, the 3rd respondent is not liable to pay compensation to the appellant. The claim petition is bad for non-joinder of owner and insurer of the Motorcycle. The 1st respondent, driver of the Lorry has not informed the 3rd respondent-Insurance Company about the accident and did not submit the vehicle records for verification. Without receiving the copy of the policy, Registration Certificate, Driving License and permit particulars from the appellant or owner of the Lorry, the 3rd respondent-Insurance Company is unable to admit whether the policy and Registration Certification was in force at the time of alleged accident. At the time of accident, the 1st respondent did not possess valid driving license to ply the vehicle. In any event, the total compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined herself as P.W.1, one R.Natrayan, eye-witness to the accident was examined as P.W.2 and 11



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documents were marked as Exs.P1 to P11. On the side of the 3rd respondent-Insurance Company, one Vaitheeswaran, their Official was examined as R.W.1, 1st respondent/driver of the Lorry was examined as R.W.2 and 3 documents were marked as Exs.R1 to R3.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that both the deceased/rider of the Motorcycle as well as the 1st respondent/driver of the Lorry are equally responsible for the accident, fixed 50% negligence on both of them and directed the respondents to jointly and severally pay a sum of Rs.3,08,000/- as compensation to the appellant.

8.Questioning the 50% negligence fixed on the deceased as well as not being satisfied with the amounts awarded by the Tribunal in the award dated 27.09.2019, made in M.C.O.P. No.260 of 2018, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the



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accident occurred only due to rash and negligent driving by the 1st respondent/driver of the Lorry, who suddenly stopped the Lorry without any signal. The appellant examined P.W.2, an independent eye-witness who deposed that the accident occurred only when the 1st respondent/driver of the Lorry suddenly stopped the Lorry. The 3rd respondent examined only the driver of the Lorry and did not examine any independent witness. The appellant marked Ex.P1 – FIR which was registered against the 1st respondent/driver of the Lorry. The Tribunal, without properly appreciating the evidence of P.W.2 and contents of FIR, erroneously fixed 50% contributory negligence on the part of the deceased, without fixing entire negligence on the part of the driver of the Lorry. At the time of accident, the deceased Arun was doing Real Estate Business and was earning a sum of Rs.15,000/- per month. Without considering the cost inflation index, cost of living and year of accident, the Tribunal fixed only a meagre sum of Rs.6,000/- per month as notional income of the deceased. Considering the fact that the appellant is a widow lady who is entirely dependent on the deceased, the Tribunal ought to have deducted 1/3rd towards personal expenses of the



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deceased, instead of deducting 50%. The amounts awarded by the Tribunal towards loss of love and affection and funeral expenses are meagre. The Tribunal failed to award any amount towards loss of estate and loss of filial consortium and prayed for enhancement of the compensation.

10.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company submitted that the deceased while riding the Motorcycle in a zig-zag manner without wearing helmet, lost control and dashed on the backside of the Lorry. The accident occurred only due to the negligence on the part of the deceased. The Tribunal ought to have fixed entire negligence on the deceased. The appellant failed to prove the avocation and income of the deceased. In the absence of any material evidence, the notional income fixed by the Tribunal is not meagre. The deceased died as a bachelor. Hence, the Tribunal has rightly deducted 50% towards personal expenses. The appellant has not made any case for enhancement of the compensation and prayed for dismissal of the appeal.



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11. Heard learned counsel appearing for the appellant as well as the 3rd respondent-Insurance Company and perused the materials available on record.

12. It is the admitted case of both the appellant and 3rd respondent-Insurance Company that when the deceased dashed on the back side of the Lorry, the accident occurred. The manner of the accident alleged by the appellant and 3rd respondent is different. According to the appellant, the driver of the Lorry was driving the Lorry at high speed and suddenly stopped the Lorry without giving any signal. Due to negligent stopping of the Lorry by driver, the deceased dashed on the backside of the Lorry and sustained fatal injury. On the other hand, in the counter statement, it is the case of the 3rd respondent-Insurance Company that the deceased rode the Motorcycle in a zig-zag manner without wearing helmet, without possessing driving license and dashed on the Lorry. The appellant examined P.W.2 – independent eye-witness who deposed as claimed by the appellant. The 3rd respondent examined the driver of the Lorry as R.W.2. The driver of the Lorry deposed



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contrary to the stand taken by the 3rd respondent in the counter statement and deposed that he parked the Lorry with parking signal on the edge of the road and got down from the Lorry to enquire and by that time, the deceased dashed on the backside of the Lorry. Whereas in the counter statement, the 3rd respondent has taken the stand that the deceased dashed on the backside of the moving Lorry. The Tribunal considering this contradiction and the fact that the driver of the Lorry is an interested witness, did not accept the evidence of driver and accepted the evidence of P.W.2/independent eye-witness and FIR. The Tribunal considering the evidence of P.W.2 and FIR, held that the accident occurred due to the negligence on the part of the Lorry driver. Having held so, the Tribunal, considering the fact that the accident occurred when the deceased dashed on the backside of the Lorry, held that the deceased also contributed to the accident and fixed 50% negligence on the part of the deceased. 50% negligence fixed on the deceased is on higher side. The 3rd respondent-Insurance Company did not prove by examining independent witness that Lorry was parked on the edge of the road with parking signal. The Tribunal held that accident occurred due to the negligence



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of driver of the Lorry. The Lorry is a heavy vehicle. Having held that the accident occurred due to the negligence on the part of the driver of the Lorry, the Tribunal fixed 50% contributory negligence on the deceased, which is on higher side. Considering the entire facts and circumstances of the case, we fix the negligence on the part of the deceased as 25% and direct the 3rd respondent-Insurance Company to pay 75% of the compensation awarded, to the appellant.

13.As far as the quantum of compensation is concerned, it is the contention of the appellant that at the time of accident, the deceased Arun was aged 31 years, doing Real Estate Business and was earning a sum of Rs.15,000/- per month. The appellant did not file any document to prove the avocation and income of the deceased. In the absence of any materials with regard to avocation and income, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2014. The notional income fixed by the Tribunal is meagre. Considering the year of accident and nature of work done by the deceased, the notional income of the



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deceased is fixed at Rs.8,000/- per month. Though the appellant claimed that the age of the deceased was 31 years at the time of accident, the Tribunal rightly considering the driving license of the deceased which was marked as Ex.P9, fixed the age of the deceased as 33 years and applied the correct multiplier '16'. The deceased was a bachelor at the time of accident. The Tribunal rightly deducted 50% towards personal expenses of the deceased. The Tribunal failed to grant any enhancement towards future prospects of the deceased. As per the judgment of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]**, the appellant is entitled to 40% enhancement towards future prospects. Hence, fixing Rs.8,000/- per month as notional income of the deceased, granting 40% enhancement towards future prospects, applying the multiplier '16' and deducting 50% towards personal expenses of the deceased, the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.10,75,200/- {Rs.8,000/- + Rs.3,200/- (40% of Rs.8,000/-)} x 12 x 16 x 50%}. The Tribunal has granted only a sum of Rs.20,000/- towards loss of love and affection to the appellant, which is meagre. As per the judgment of



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the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC)** (referred to above), the appellant/mother of the deceased is entitled to Rs.40,000/- towards loss of love and affection. Hence, the amount granted by the Tribunal towards loss of love and affection is enhanced to Rs.40,000/-. The Tribunal has not awarded any amount for loss of estate and transport expenses. Hence, a sum of Rs.15,000/- is awarded towards loss of estate and Rs.10,000/- towards transportation expenses. The Tribunal has excessively awarded a sum of Rs.20,000/- towards funeral expenses and hence, the same is reduced to Rs.15,000/-. Thus, the compensation awarded by 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 dependency	5,76,000/-	10,75,200/-	Enhanced
2.	Loss of love and affection	20,000/-	40,000/-	Enhanced
3.	Transportation	-	10,000/-	Granted
4.	Funeral expenses	20,000/-	15,000/-	Reduced



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5.	Loss of estate	-	15,000/-	Granted
	Total	6,16,000/-	11,55,200/-	
	50% of compensation (In view of contributory negligence)	3,08,000/-	-	Enhanced by Rs.5,58,400/-
	75% of compensation (In view of contributory negligence)	-	8,66,400/-	

14. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.3,08,000/- is enhanced to Rs.8,66,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.260 of 2018. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The learned counsel appearing for the appellant is directed to pay the Court fee on



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the award amount as per the order of this Court dated 04.08.2020 made in

WEB COPY C.M.P.No.8044 of 2020 in C.M.A.SR.154846 of 2019. No costs.

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

29.06.2022

Index : Yes/No

gsa

To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal)
Kangeyam, Tiruppur District.

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



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**V.M.VELUMANI,J.
and
S.SOUNTHAR,J.**

(gsa)

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