IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA
CMA.No. 89 of 2022

1.Sellam
2.Minor Brindha
3.Minor Kaviarasan
4.Minor Dhanasekaran
(Minor Appellants 2 to 4 are represented
by next friend and Guardian mother
the 1st appellant Sellam)
5.Ramasamy
Pappathi (died)
6.Ananthi
7.Gopal ...Appellants

Vs.

1.The Secretary,
Little Angel Matriculation School,
Aniyapuram, Namakkal.

2.The Oriental Insurance Company Limited,
KVA Complex, No.90-A, Thuraiyur Road,
Namakkal.
...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree passed in M.C.O.P.No.1369 of 2013 dated 02.11.2020 on the file of Motor Accident Claims

Tribunal, (Principal District Court (FAC)) Namakkal.

For Appellants : R.Nalliyappan
For R-1 : No appearance
For R-2 : Mr.M.J.Vijaya Raghavan

JUDGMENT

This appeal is filed challenging the Award and Decree passed in M.C.O.P.No.1369 of 2013 on the file of Principal District Court (FAC), Namakkal.

2. The appeal is filed by the claimants for enhancement of compensation. On 22.06.2013, while the deceased Thangavel was riding his bike in Kattuputhur to Valayapatti road, a school bus driven by its driver in a rash and negligent manner came in the opposite direction and hit the deceased's vehicle causing him fatal injuries.

3. According to the claimants, the deceased was aged 34 years at the time of accident, was working as a mason and earning Rs.12,000/- per month. The claimants, being the wife, minor children and parents of the deceased filed the

claim petition claiming a sum of Rs.10,00,000/- as compensation.

4. The first respondent appeared through counsel but did not file counter. The second respondent/Insurance company contested the claim petition by filing a counter disputing the manner of accident, negligence, liability and the quantum of compensation.

5. Before the Claims Tribunal, the claimants examined two witnesses and marked Ex.P.1 to Ex.P.15 in support of the claim. On the side of the respondents, no witness was examined and Ex.R.1 was marked.

6. The Claims Tribunal on an assessment of the entire evidence on record rendered a finding of negligence against the driver of the school bus. The Claims Tribunal on the issue of negligence found that the deceased had contributed to the accident and therefore fixed the contributory negligence of the deceased at 50%. The Tribunal on the basis of materials on record assessed the compensation at Rs.20,05,360/- and deducted 50% towards contributory negligence of the deceased, awarded Rs.10,02,680/- as compensation along

with 7.5% interest and mulcted the liability on the second respondent/Insurance company.

7. Aggrieved by the findings of the Claims Tribunal on negligence and the quantum of compensation, the claimants have preferred the above appeal.

8. The learned counsel for the appellants submitted that the finding of the Claims Tribunal on the issue of negligence was erroneous and unsustainable, as there was absolutely no contra evidence to controvert the claimants case. The learned counsel further submitted that the Claims Tribunal erred in assessing the notional income at Rs.9,000/- per month. According to the counsel, the income ought to have been fixed at least Rs.12,000/- per month, as the accident occurred in the year 2013. The counsel further submitted that the award of the Tribunal towards loss of consortium was not in conformity with the Judgment of the Hon'ble Supreme Court in the case of *National Insurance Co. Ltd vs. Pranay Sethi* reported in *2017(2) TN MAC 609 (SC)*. On the aforesaid grounds, the learned counsel for the appellants prayed for enhancement of compensation.

9. The learned counsel for the second respondent/Insurance company on the other hand, submitted that the finding of Tribunal towards contributory negligence of the deceased was justified, as it was supported by Ex.P.3, the MVI Report. The learned counsel further submitted that under Ex.R.1, the complaint was closed and therefore it was to be presumed that there was no negligence on the part of the driver of the school bus. On the issue of quantum, the learned counsel submitted that the award passed by Claims Tribunal was just, fair and reasonable and did not call for any interference by this Court.

10. I have heard both the learned counsels and have perused the materials placed on record.

11. The points to be decided in this appeal are whether the finding of the Claims Tribunal on the issue of negligence is sustainable and whether the compensation awarded to the claimants was fair and reasonable.

12. On the issue of negligence, it is the case of the claimants that the rash and negligent driving of the driver of the school bus resulted in the accident.

According to the claimants, while the deceased was riding his bike, the driver of the school bus drove the vehicle in a rash and negligent manner, hit against the deceased's vehicle and caused the accident.

13. In para 3 of the counter affidavit filed by the second respondent/Insurance company, the manner of accident narrated in the claim petition as also FIR was denied. It was the specific case of the second respondent that the deceased Thangavel was in an inebriated condition and it was he who came in the opposite direction in a rash and negligent manner and dashed against the parked school bus. Therefore, according to the second respondent/Insurance company, the school bus was stationary and it was the deceased's own negligence, which resulted in the accident. The FIR was lodged by the father of the deceased, wherein he had stated that the negligence of the driver of school bus resulted in the accident.

14. The claimants relied on the FIR as also the evidence of P.W.2 an eye witness to prove the negligence of the driver of the school bus. P.W.2 in his proof affidavit clearly stated that the bus was driven by its driver in a rash and

negligent manner and it was the negligence of the driver of the bus that caused the accident resulting in the death of the deceased. Though, a stand was taken by the second respondent in its counter that the bus was parked at the time of the accident, absolutely no evidence was let in to prove the same. The learned counsel for the second respondent/Insurance company relied on Ex.P.3, MVI report in support of his contention, that the deceased's negligence resulted in the accident. According to the counsel, as there was damage to the front right portion of the bus and centre portion of the bike, it could be presumed that it was the deceased who hit the parked bus. The learned counsel further relied on Ex.R.1 and submitted that the complaint was closed with notice to the father of the deceased and therefore a presumption of negligence against the deceased ought to be raised.

15. In my view the reliance placed on Ex.P.3, MVI report and Ex.R.1 by the learned counsel for the second respondent is misconceived. The MVI report cannot speak on the manner of accident. In so far as the proof of manner of accident is concerned, the second respondent/Insurance company ought to have examined its driver to prove its case that the bus was parked and it was

the deceasead's negligence that resulted in the accident. As far as, reliance placed under Ex.R.1 is concerned, I agree with the trial Court that Ex.R.1 is a mere RCS notice wherein no details as to why the charge sheet was closed was narrated. The best evidence, in my opinion in this case was the driver of the bus and as driver of the bus was not examined by the second respondent, an adverse inference should be drawn against the second respondent/Insurance that the case set up by it is false.

16. In the light of the said evidence of P.W.2 which corroborates the FIR, I am of the view that the finding of the Tribunal on contributory negligence of the deceased is unsustainable and the same is set aside.

17. On the quantum of compensation, it is seen that, in the absence of evidence the Tribunal assessed the notional income at Rs.9,000/- per month. Considering the age of the deceased, his avocation and also socio economic conditions prevailing at the time of the accident, I am of the view that the notional income can be fixed at Rs.10,000/- per month 40% of the income is added towards future prospects and 1/4th is deducted towards personal

expenses. Considering the age of deceased who was 34 years at the time of accident, the appropriate multiplier '16' is adopted. Therefore the loss of dependency is arrived at Rs.20,16,000/- (10,000x40/100=4000, 10,000+4,000= 14000x1/4=3,500, 14,000-3500= 10,500x12x16=20,16,000/-).

18. The contention of the learned counsel for the appellants that the claimants 2 to 4 the minor children and parents of the deceased are entitled to Rs.40,000/- each towards loss of consortium is justified. Therefore the award of the Claims Tribunal is modified as follows:

S.No.	*Various Heads*	*Award by Tribunal (amount in Rs.)*	*Award by this Court (amount in Rs.)*
1.	Loss of Dependency	19,35,360/-	20,16,000/-
2.	Loss of Estate	15,000/-	15,000/-
3.	Funeral Expenses	15,000/-	15,000/-
4.	Loss of Consortium	40,000/-	2,40,000/- (40,000 (each) x 6)
	Total compensation	20,05,360/-	**22,86,000/-**
50% Contributory Negligence		10,02,680/-	Contributory Negligence is set aside

19. In the result claimants are entitled to total compensation of Rs.22,86,000/- along with 7.5% interest as enhanced compensation without any deduction towards contributory negligence, as this Court has set aside the

finding of the Claims Tribunal on contributory negligence.

20. It is submitted by the learned counsel for the second respondent that Insurance company deposited entire award amount along with accrued interest and costs before the Claims Tribunal. In the light of the said submission of the learned counsel for the second respondent, a direction is issued to the Insurance company to deposit the balance enhanced amount along with 7.5% interest from the date of claim petition till the date of deposit, (excluding the Default Period (i.e) From 01.07.2016 to 17.09.2019) within a period of eight (8) weeks from the date of receipt of copy of this Judgment. On such deposit being made, the claimants are entitled to withdraw the amounts in the ratio and as per the direction of the Claims Tribunal. The share of the minor claimants shall be kept in fixed deposit in a nationalised bank till they attain majority.

In the result this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

27.06.2023

dsn
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation:Yes/No

To
The Principal District Judge,
Motor Accident Claims Tribunal,
Namakkal

Copy to
The Section Officer,
V.R. Section,
High Court, Madras.

N.MALA.,J.

dsn

C.M.A.No.89 of 2022

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