



C.M.A. No. 1170 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1170 of 2021 and

C.M.P. No. 5968 of 2021

1. State of Tamil Nadu
Represented by the District Collector,
Trichirappalli having its Office at
Collectorate,
Trichirappalli District & Munsiff.
2. The Superintendent of Police,
Trichy, having his Office at District
Police Head Quarters,
Trichirappalli District & Munsiff ... Appellants/ Respondents

Vs.

1. Mrs. Kasthuri
2. Minor Guhan
3. Minor Kavin
4. Mr. Ramalingam
5. Mrs. Banumathi ... Respondents / Petitioners
6. Sakthivel ... Respondent / Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 09.10.2020 passed in M.C.O.P. No. 20 of 2017 on the file of the Sessions Judge, Fast Track Mahila Court, Motor Accident Claims Tribunal, Nagapattinam.



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For Appellants : Dr. S. Surya
(Additional Government Pleader)
For RR 1 to 5 : Mr. C. Prabakaran
For R6 : No Appearance

Cros. Obj. No. 75 of 2022

1. Mrs. Kasthuri
2. Minor Guhan
3. Minor Kavin
4. Mr. Ramalingam
5. Mrs. Banumathi ...Cross Objectors/ Respondents 1 to 5

Vs.

1. State of Tamil Nadu
Represented by the District Collector,
Trichirappali having its Office at
Collectorate,
Trichirappalli District & Munsiff.
2. The Superintendent of Police,
Trichy, having his Office at District
Police Head Quarters,
Trichirappalli District & Munsiff. ... Respondents 1&2/ Appellants
3. Sakthivel ... 3rd Respondent/ 3rd
Respondent

For Cross Objectors : Mr. C. Prabakaran
For Respondents : Dr. S. Surya
(Additional Government Pleader)



JUDGMENT

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This Civil Miscellaneous appeal has been filed by the second respondent challenging the Judgment and Decree passed in M.C.O.P. No.20 of 2017, dated 09.10.2020 on the file of the Sessions Judge, Fast Track Mahila Court, Motor Accident Claims Tribunal, Nagapattinam, wherein the Tribunal has awarded compensation for a sum of Rs.11,88,440/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization and also fixed the contributory negligence in the ration of 50-50 on the deceased as well as on the first respondent. The claimants filed cross-objection in this appeal challenging the contributory negligence fixed on the deceased and for enhancement of compensation.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 27.08.2016 at about 16:45 hours, the deceased namely Muthu Kumar, husband of the first claimant was riding his Hero Honda two wheeler bearing Registration No.TN-51-J-5755 from Puthur to Karaikkal on East Coast Road from North to South direction, while he reached near



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Paalaiyur service road, a Bolero jeep bearing Registration No.TN-45-G-1066 which belongs to the second respondent and driven by the first respondent in a rash and negligent manner, came in the opposite direction from South to North direction and hit on the two wheeler of the deceased and caused instantaneous death to him. A criminal case was registered in crime No.315 of 2016 U/s.279, 337 and 304-A I.P.C. on the file of the Velippalayam Police Station against the deceased based on the complaint lodged by the jeep driver. The wife, children and parents of the deceased, have filed a claim petition seeking compensation for a sum of Rs.34,00,000/- under section 140 and 166 of the Motor Vehicles Act, 1988.

4. The second respondent is the owner of the Bolero jeep bearing Registration No.TN-45-G-1066 has filed a counter and contended that the driver of jeep had driven with due care and caution on the left hand side of the road and due to the negligence on the part of the deceased, who was under the influence of alcohol, while over taking a lorry, entered in the middle of the road and hit on the Bolero jeep, which resulted in accident. Due to the accident, the passengers in the jeep was also severely injured and one of the officer travelled in the jeep had sustained grievous injury on the



hand.

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5. Before the Tribunal, on the side of the claimants P.W.1 and P.W.2 were examined and Exs.P.1 to P.19 were marked. On the side of the respondents, R.W.1 and R.W.4 were examined and Exs.R.1 to R.5 were marked.

6. Based on the evidence placed on record, the Tribunal in point No.1, has held that both the rider of the two wheeler as well as the driver of the jeep are responsible for the accident and both have driven their vehicles negligently and fixed the contributory negligence in the ratio of 50:50. In point No.2, the Tribunal has quantified and granted compensation for a sum of Rs.11,88,440/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization to the claimants and fixed the liability on the respondents 1 to 3 to pay the compensation to the claimants.

7. Aggrieved over the fixing of liability on respondents they have filed this appeal to set aside the award and to absolve them from the liability to pay the compensation. The claimants have also filed a Cross Objection seeking enhancement of compensation stating that the Tribunal has not



properly awarded the compensation and also challenging, 50% contributory negligence fixed on the deceased.

8. Dr. S. Surya, Additional Government Pleader appearing for the appellants submitted that the Tribunal has not properly appreciated the fact that the deceased was under the influence of alcohol and he was not in a fit mental condition to drive the two wheeler. He drove the two wheeler negligently and entered in the middle of the road and hit on the jeep which resulted in causing severe injuries to the passengers in the jeep. The evidences of Forensic experts as well as the driver of the jeep was not properly appreciated by the Tribunal. The evidences adduced on the side of the claimants to disprove the negligence on the part of the deceased were not sufficient but the Tribunal based on preponderance of probabilities has fixed the contributory negligence on the part of the driver of the jeep. Hence, the finding that the driver of the jeep also responsible to the extent of 50% is not sustainable and prays to set aside the same and absolve the respondents from paying the compensation.

9. Per contra, the learned counsel appearing for the claimants submitted that P.W.2 – eye witness, has categorically stated that the jeep



was driven in such a speed and not only hit the two wheeler, but also capsized. Even though, the Tribunal has considered the negligent act on the part of the driver of the jeep but also fixed contributory negligence of 50% on the part of the deceased, which is not sustainable and prays to set aside the contributory negligence fixed on the deceased. He further submitted that the notional income fixed under the head loss of income is less than the norms followed by this Court, prays to award Just compensation.

10. I have considered the submissions made on both sides and perused the materials available on record.

11. The claimants have examined P.W.2, who has stated that, on 27.08.2016 at about 16:45 hours, the deceased Muthukumar was riding his Hero Honda two wheeler bearing Registration No. TN-51-J-5755 from Puthur to Karaikkal on East Coast Road from North to South direction, while he reached near Paalaiyur Service road, a Police Bolero jeep bearing Registration No. TN-45-G-1066 came from South to North direction in high speed, hit on the two wheeler, which resulted in instantaneous death of the deceased. In the cross examination also, he has re-iterated that the driver of



the jeep has driven the same in high speed and in negligent manner. It is also elicited that he was not examined as witness by the police during the investigation. However, he admitted that the road is wide enough to ply two vehicles and he also denied the fact that while over-taking the lorry by the two wheeler, the accident was occurred.

12. To disprove the evidence of P.W.2, R.W.1- driver of the jeep was examined by the respondents herein. He has stated that while over taking a lorry, the deceased, suddenly entered into the middle of the road, that too in a high speed and hit on the jeep. Due to the impact, he had lost his control, jeep was capsized. The respondents have also examined the forensic experts, who examined viscera of the deceased and through him the Ex.R.3 - viscera report was also marked. The viscera report shows that the deceased was under the influence of alcohol and the evidences of R.W.1 and R.W.2 reveals that the deceased Muthukumar stomach was filled with high concentration of ethyl alcohol.

13. Tribunal has held that the deceased has rode the two wheeler in a high speed and he was under the influence of alcohol. The Tribunal further held that the negligent act of the deceased could not have caused



severe impact on the jeep, unless the jeep was driven in high speed.

Accordingly, fixed negligence against both of them equally in the ratio of 50:50.

14. On careful analysis of evidence placed on record shows that even though, the deceased was under the influence of alcohol, the manner in which the accident has occurred shows that if the driver of the jeep has driven his vehicle with due care and caution with safe speed, it would have only resulted in causing injury or death to the rider of the two wheeler and there is no possibility for causing severe injuries to the passengers in the jeep, including capsizing of jeep. In this case, there is also an evidence placed on record that one of the passenger i.e., the Inspector of Police has also sustained severe injuries in his hand resulted in amputation.

15. The facts discussed supra only reveals both the rider of the two wheeler and the driver of the jeep have driven their vehicles in negligent manner, that too in high speed, which resulted in causing severe injuries on both sides. This Court is of the view that the Tribunal has properly appreciated the evidence placed on record on both sides and rightly fixed the negligence on both the deceased as well as on the first respondent, and this



Court is not inclined to interfere in the finding of Tribunal.

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16. With regard to the quantum of compensation is concerned, the Tribunal has fixed the notional income of the deceased as Rs.7,620/- based on the Cost of Inflation Index issued by the Central Board of Direct Tax by following the judgment of this Court in ***Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]***. However, the learned counsel for the claimants has relied on the judgment of the Division Bench of this Court in ***CMA No. 2636 of 2022 dated 17.07.2023, Petchiammal and three others vs. M. Sathyamoorthy and another***, wherein this Court in paragraph no.10 held as follows:

"We are fully in agreement with the learned counsel for the 2nd respondent that the claimants have not provided any documentary or oral evidence in respect of the employment and earnings of the deceased to the tune of Rs.25,000/- per month. Therefore, the Tribunal is right in calculating the compensation on the basis of the notional income. But, however, this Court had been consistently following the earlier order in C.M.A. No.576 of 2022 (Reliance General Ins. Co. Ltd. vs. Manju and Ors.) wherein it is held that even in respect of the accidents which took place in the year 2014-2015, a sum of Rs.15,000/- is taken as notional income. This accident had taken place in the year 2019. Therefore, giving at least 10% increase for 3 years, the notional income can be taken



as Rs.17,000/- in the present case."

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17. In the present case, deceased is mason and the accident was taken place on 27.08.2016 as observed by the Divisional Bench of this Court in ***Petchiammal case*** cited supra, this Court consistently following the fixation of notional income as Rs.15,000/- from the year 2015 for the accident cases, and accordingly the notional income is fixed as Rs.15,000/- per month. As per the dictum laid down in ***National Insurance Co. Ltd., vs. Pranay Sethi and other*** reported in ***[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]***, this Court is inclined to grant 40% as future prospectus and as per ***Sarla Verma and others Vs. Delhi Transport Corporation and others*** reported in ***[2009 ACJ 1298 SC : 2009 (6) SCC 121]***, the multiplier is fixed as '16' by considering the age of the deceased. Since, the claimants herein are five in numbers, after deducting one-fourth (1/4) of his monthly income towards personal and living expenses of the deceased, the compensation under loss of income with future prospectus is modified as follows:

Annual income (Rs.15,000/- x 12)	= Rs.1,80,000/-
Future prospects @ 40%	= Rs.72,000/-
Yearly income of the deceased	= Rs.2,52,000/-
Yearly contribution to his family (deduction of 1/4)	= Rs.1,89,000/-



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Applicable Multiplier

= 16

Total compensation (Rs.1,89,000/- x 16)

= Rs.30,24,000/-

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18. The Tribunal has awarded spouse consortium for a sum of Rs.1,00,000/- to the first petitioner, parental consortium of Rs.50,000/- each to the minor children, who are the second and third petitioners and filial consortium of Rs.50,000/- each to the parents of the deceased, who are the fourth and fifth petitioners. This Court is of the view that the spouse and filial consortiums fixed are on the higher side and the same is modified as follows: the first claimant, who is the wife of the deceased is entitled to spouse consortium of Rs.40,000/- and the fourth and fifth claimants, who are the parents of the deceased are entitled to filial consortium of Rs.40,000/- each. The minor children are entitled to parental consortium of 40,000/- each, as per the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd., vs Nanu Ram [2018 ACJ 2018]***. The claimants are entitled to Rs.15,000/- each under the head loss of estate and funeral expenses. The compensation awarded under funeral expenses includes transportation expenses, hence the compensation of Rs.10,000/- awarded under the head transportation expenses is hereby cancelled.



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19. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of income	8,53,440/- (after deducting 50% contributory negligence)	30,24,000/-	Enhanced
2.	loss of spouse consortium	1,00,000/-	40,000/-	Reduced
3.	Loss of filial consortium	1,00,000/-	80,000/-	Reduced
4.	Loss of parental consortium	1,00,000/-	80,000/-	Reduced
5.	Loss of Estate	10,000/-	15,000/-	Enhanced
6.	Transportation Expenses	10,000/-	---	Cancelled
7.	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total	11,88,440/-	32,54,000/-	
	Deducting 50% Contributory negligence	---	16,27,000/-	
	Total Compensation	11,88,440/-	16,27,000/-	Enhanced

20. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.11,88,440/- is hereby enhanced to **Rs.16,27,000/- [Rupees Sixteen Lakhs and Twenty Seven**



Thousand only] together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The appellants are directed to deposit the amount awarded 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 to the credit of M.C.O.P.No.20 of 2017 on the file of the Sessions Judge, Fast Track Mahila Court, Motor Accidents Claims Tribunal, Nagapattinam. On such deposit, the claimants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants, as far as minor claimants are concerned, the award amount of the minor claimants shall be deposited in the name of the claimants in any one of the Nationalized Bank in Fixed Deposit under the guardianship of their mother till they attain the majority and the 1st claimant, who is the mother of the minors is entitled to receive the interest once in six months exclusively for the welfare of the minors. Consequently, the connected civil miscellaneous petition stands closed and the Cross objection



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No.75 of 2022 filed by the claimants is partly allowed. Since this Court has enhanced the compensation, the claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

06.10.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Sessions Judge, Fast Track Mahila Court,
Motor Accident Claims Tribunal,
Nagapattinam.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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