



CMA.No.2674 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.2674 of 2013

1. D.Shenbagavalli
2. Minor D.Velmurugan
3. D.Senthilkumar
4. P.Chinnathai

Appellants

Vs

1. Parameswari
2. Minor R.Balakrishnan
3. Minor R.Suthakar
4. M/s.The Oriental Insurance Company Limited
Coimbatore 641 018

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 19.01.2009, made in MCOP.No.58 of 2008, by the Chief Judicial Magistrate (MACT) Coimbatore.

For Appellants : Mr.K.Varadha Kamaraj for Ms.M.Pravalika

For Respondents : Mrs.R.Sreevidhya-R4
RR1 to 3- No Appearance

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 19.01.2009, made in MCOP.No.58 of 2008, by the Chief Judicial Magistrate (MACT) Coimbatore.
2. The Appellants, who are the wife, sons and mother of the deceased P.Dhanapal, have filed the claim petition before the Tribunal, seeking a



CMA.No.2674 of 2013

WEB COPY

compensation of Rs.10,00,000/- on various heads, for the death of the deceased, who died in a motor road accident, which took place on 14.07.2007. In the alleged accident, two motor cycles have involved, namely, one two wheeler was driven by the deceased, whose legal heirs are the claimants and another by one R.Rangasamy, who subsequently died. The Respondents 1 to 3, who are the legal heirs of the deceased S.Rangasamy, remained exparte. The claim petition was resisted, on various grounds, by the 4th Respondent Insurance Company, by filing a counter. On the side of the claimants, PW.1 to PW.3 were examined and Ex.P1 to Ex.P10 were marked.

3. Finding that the deceased died on the spot in the alleged motor road accident due to the rash and negligent driving of both the drivers of the two wheelers and thereby apportioning contributory negligence in the ratio of 50:50 on both the riders of the two wheelers respectively, the Tribunal has awarded a total compensation of Rs.2,83,500/- with interest at 9% p.a. from the date of the claim petition till the date of realization, to the claimants, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Dependency	512000.00
2	Loss of Consortium	20000.00
3	Loss of Love and Affection	30000.00
4	Transportation Expenses	2500.00
5	Funeral Expenses	2500.00
6	Less 50% Contributory Negligence	283500.00
Total Compensation		283500.00

Aggrieved by the same, this appeal has been filed by the claimants.

4. This Court heard the learned counsel on either side, considered their



CMA.No.2674 of 2013

submissions and also perused the entire materials placed on record.

WEB COPY

5. According to the learned counsel for the Appellants, while the deceased was riding his motor cycle, following the traffic rules, the accident had occurred only due to the rash and negligent driving of the rider of the two wheeler, coming in the opposite direction and hence, the apportionment in the ratio of 50:50 on both the riders arrived at by the Tribunal is not sustainable. Since it is a case of fatal, the Tribunal erred in not adding 40% future prospects, while arriving at the loss of dependency. Further, the compensation awarded under the other heads are also to be enhanced.
6. According to the learned counsel for the 4th Respondent, the deceased was also equally responsible for the accident due to his rash and negligent driving and hence, the compensation awarded by the Tribunal, apportioning 50%:50% on both the riders of the two wheelers, is just and proper.
7. In so far as the quantum of compensation is concerned, as a driver the deceased would have earned not less than Rs.5,000/- p.m. Since it is a fatal case, the Tribunal, while arriving at the loss of dependency, erred in not adding 40% of the monthly income towards future prospects. Hence, the loss of dependency needs to be calculated, by adding 40% towards future prospects. Since the deceased was aged 38 years old at the time of the accident, the proper multiplier is 15. After adding 40% of the monthly income towards future prospects and then, deducting 1/4th towards his personal expense, the loss of monthly dependency would come to Rs.5,250/-. Thus,



CMA.No.2674 of 2013

the total loss of dependency would come to Rs.9,45,000/- (Rs.5,250x12x15).

8. The deceased was aged 38 years old and his wife/1st claimant was aged 28 years old at the time of the accident and the claimants 2 and 3 are the minor children and the 4th claimant is the mother. Considering the same, the compensation of Rs.20,000/- towards loss of consortium, Rs.30,000/- towards loss of love and affection, Rs.2,500/- towards transportation expenses and Rs.2,500/- towards funeral expenses awarded by the Tribunal are enhanced to Rs.40,000/-, Rs.1,20,000/-, Rs.5,000/- and Rs.15,000/- respectively. Further, a sum of Rs.15,000/- towards loss of estate is hereby awarded. In all, the total compensation would come to Rs.11,40,000/-.

9. Now, coming to the issue of contributory negligence, it is to be seen as to whether the Tribunal was right in apportioning the same in the ratio of 50:50 both on the riders of the two wheelers.

10.Ex.P1 is the First Information Report. Ex.P2 is the rough sketch. Ex.P3 and Ex.P4 are the Inspection Reports of the two wheelers involved in the accident, namely, motor cycle, bearing Reg.No.TN 37 AS 1723, driven by the deceased, P.Dhanapal, whose legal heirs are the claimants herein and TVS 50, bearing Reg.No.TN 37 W 2779, driven by the deceased R.Rangasamy. PW.2 is the witness, who was going in his motor cycle, behind the motor cycle driven by the deceased, at the time of the accident and who gave complaint to the Police, on seeing the accident.

11. As per the oral evidence of PW.2 and the documentary evidence, namely,



CMA.No.2674 of 2013

WEB COPY

Ex.P1 and Ex.P2, it is seen that when the deceased was riding in his motor cycle from East to West on the left side of Othakkalmandapam to Velandavalam Main Road, near Seerapalayam Pirivu, the TVS 50, coming in the opposite direction on the same left side, driven by its rider in a rash and negligent manner, dashed against the motor cycle driven by the deceased and thus, it is clear that the rider of the TVS 50 was riding his two wheeler on the wrong side and that there was major contributory negligence in causing the accident on the part of the rider of TVS 50 also and there was also contributory negligence to some extent on the part of the deceased rider of the motor cycle. Therefore, this Court finds it appropriate to apportion the contributory negligence in the ratio of 70:30 as against both the riders of the two wheelers, namely, the R.Rangasamy and the deceased herein respectively. In view of such apportionment of negligence, the total compensation payable to the claimants by the 4th Respondent Insurance Company would come to Rs.7,98,900/.

12.In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimants are entitled to a total compensation of Rs.7,98,900/- (Rupees seven lakhs ninety eight thousand nine hundred only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as detailed below:-



CMA.No.2674 of 2013

S.No	Category	Award Amount (Rs.)
1	Loss of Dependency	945000.00
2	Loss of Consortium	40000.00
3	Loss of Love and Affection	120000.00
4	Transportation Expenses	5000.00
5	Funeral Expenses	15000.00
6	Loss of Estate	15000.00
7	Less 30% Contributory Negligence	342000.00
Total Compensation		798000.00

The 4th Respondent / Insurance Company is directed to deposit the entire

A.A.NAKKIRAN, J.

Srcm

award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited, within a period of six weeks from the date of receipt of a copy of this order. The claimants 1 to 4/ Appellants 1 to 4 are entitled to withdraw Rs.3,66,000/-, Rs.1,40,000/-, Rs.1,40,000/- and Rs.1,52,000/-, respectively, with proportionate interest, by filing proper application and by paying proper court fee for the enhanced compensation. No costs.

24.04.2023

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

Srcm

To



CMA.No.2674 of 2013

1. The Chief Judicial Magistrate (MACT) Coimbatore.
2. The Record Keeper, VR Section, High Court, Madras

CMA.No.2674 of 2013