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CMA No. 315 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 315 of 2022

1. Sakunthala

2. Malliga

... Appellants

Versus

1. Sangavi

2. The United India Insurance Co. Ltd.,
D. No. 316, Upstairs of State Bank of India,
Main Road, Pothanur, Paramathivelur Taluk,
Namakkal District – 638 181.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No. 17 of 2019 dated 05.04.2021 on the file of the Motor Accident Claims Tribunal/Principal District Judge Court, Namakkal.

For Appellants : Mr. T.S.Arthanareeswaran

For Respondents : R1 - Exparte

Mrs. R.Sreevidhya (for R2)

J U D G M E N T

The appeal has been filed by the appellants challenging the award passed by the Tribunal in M.C.O.P. No. 17 of 2019 dated 05.04.2021.



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2.The appellants had filed a claim petition before the Tribunal stating that on 07.10.2018, while the deceased was riding his TVS Wego Motor Cycle bearing Registration No. TN 34 X 1465 from Paramathy To Tiruchengode Road on South to North near H.P. petrol bunk at Ulagappampalayam, a lorry bearing Registration No. TN 28 AH 3343 driven by its driver in a rash and negligent manner in the opposite direction from North to South dashed on the left backside of the two wheeler of the deceased as a result of which, the deceased sustained severe injuries and died. Hence, the appellants have filed claim petition seeking compensation.

3.The second respondent filed a counter denying all the averments made in the claim petition stating that the accident occurred only due to the rash and negligent driving of the deceased; that the front portion of the lorry had completely entered into the said petrol bunk; and that the deceased hit on the left backside of the lorry and caused the accident; that on perusal of the MVI Report dated 11.10.2018, it was found that the deceased did not possess valid driving license and did not wear helmet at the time of the accident; that the owner of the two wheeler is the son-in-



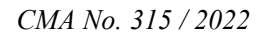
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law of the deceased and he has paid the fine of Rs. 1,100/-; and that in any case, the compensation claimed by the appellants is excessive and prayed for dismissal of the petition.

4.The first respondent remained ex-parte before the Tribunal.

5.The appellants examined two witnesses on their side as PW.1 and PW.2 and marked Ex.P.1 to Ex.P.14. On the side of the respondents, RW.1 and RW.2 have been examined and Ex.R.1 to Ex.R.6 were marked.

6.The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the rash and negligent driving of the driver of the lorry as well as the deceased and both have equally contributed for the accident and hence, fixed 50% contributory negligence on the deceased and 50% contributory negligence on the driver of the lorry belonging to the first respondent and awarded a compensation of Rs. 1,74,990/- to the appellants to be paid by the second respondent. Aggrieved by the order of the Tribunal fixing contributory negligence on the deceased and the quantum of compensation, the appellants had preferred the instant appeal.



8. Since the first respondent remained ex parte before the Tribunal, the learned counsel for the appellants submitted that the notice to the first respondent may be dispensed with and made an endorsement to that effect. Accordingly, notice to the first respondent is dispensed with.

9.The learned counsel for the second respondent, per contra,



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submitted that the Tribunal had correctly fixed the contributory negligence on the side of the deceased; that the evidence suggest that the entire negligence is on the deceased as he had rammed into the backside of the lorry; that the learned counsel therefore submitted that no interference is called for as regards fixation of contributory negligence. As regards, the quantum, the learned counsel submitted that the deceased was aged 68 years and the appellants had neither established the avocation nor the income of the deceased. In such circumstances, the Tribunal was right in fixing the notional income at Rs. 8,000/- per month and therefore, the learned counsel prayed for dismissal of the appeal.

10. The questions that arise for consideration in the instant appeal are:

- (i) Whether the Tribunal was right in fixing 50% contributory negligence on the deceased?
- (ii) Whether the compensation awarded by the Tribunal is just and reasonable?

11. On perusal of the records, this Court finds that the appellants have examined PW.2 eye-witness to the occurrence. According to PW.2,



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the offending vehicle, viz., the lorry, insured with the second respondent herein had proceeded from North to South and had taken a right turn to enter into a petrol bunk and the deceased was traveling in his two wheeler and was proceeding from South to North. PW.2 in her deposition would state that the deceased had rammed into the backside of the lorry. The second respondent had examined RW.2 Inspector of Police, who had conducted investigation who had stated that on investigation, he found that the lorry had almost entered the petrol bunk and therefore, the deceased who had hit the backside of the lorry was responsible for the accident. RW.2 had also marked Ex.R.4 Final Report filed before the jurisdictional Magistrate. Therefore, this Court finds that there is no contradiction in the evidence of PW.2 and RW.2 as regards the manner in which the accident took place. From both their deposition, it can be seen that the lorry which was proceeding from North to South had taken a right turn and almost entered the petrol bunk. The deceased who was proceeding from South to North had rammed into the lorry. Therefore, the Tribunal was right in holding that the deceased had contributed to the accident and fixing 50% contributory negligence on the deceased.

12.As regards quantum, though the appellants have not established



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the avocation and income of the deceased this Court finds that the notional income is meagre. Considering the year of the accident and the other evidence on record, this Court finds that it would be reasonable to fix Rs. 10,000/- as notional monthly income for the deceased. Since there are two dependents, $1/3^{\text{rd}}$ has to be deducted towards personal expenses. The deceased was aged 68 years at the time of the accident and hence, the multiplier applicable is 5. Therefore, the loss of income would be Rs. $10,000 \times 12 \times 5 \times 2/3 = \text{Rs. } 4,00,000/-$. Further, the appellants are entitled to Rs. 40,000/- each under the head loss of love and affection, which comes to Rs. 80,000/-. The award under the other heads are just and the same are confirmed. Thus, the award of 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	3,19,980	4,00,000	Enhanced
2.	Loss of Estate	15,000	15,000	Confirmed
3.	Funeral Expenses	15,000	15,000	Confirmed
4.	Loss of Love and Affection	---	80,000	Granted
	Total	3,49,980	5,10,000	
	After deducting 50% contributory negligence	1,74,990	2,55,000	Enhanced by Rs. 80,010/-



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on the deceased

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13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,74,990/- is hereby enhanced to Rs.2,55,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment, if not already deposited. On such deposit, the appellants are permitted to withdraw their respective shares of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn as per the apportionment fixed by the Tribunal. The appellants are further directed to pay the requisite court fee, if any, on the enhanced award amount. No costs.

23.08.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order



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Neutral Citation: Yes / No

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To

Motor Accident Claims Tribunal/Principal District Judge Court,
Namakkal.



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SUNDER MOHAN, J

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