



C.M.A.No.580 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.09.2023

Coram

The Hon'ble Mr.Justice **Sunder Mohan**

C.M.A.No.580 of 2022

and

C.M.P.No.4227 of 2022

The United India Insurance Company Ltd.,
3th party Claims HUB,
No.81, 2nd Floor, TKM Complex,
Katpadi Road, Vellore District.

...Appellant

Vs.

1. Jayarani
2. V.Sivasankaran
3. A.Sivaji

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree, dated 25.10.2021, made in M.C.O.P.No.56 of 2016, on the file of the Motor Accident Claims Tribunal (Sub Court)Vaniyambadi.



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For Appellant : Mr.D.Bhaskaran
For Respondent-1 : Ms.A.Subadra
for M/s.M.Malar
Respondents 2 & 3 : Notice dispensed with

JUDGEMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company, challenging the award passed by the Motor Accident Claims Tribunal (Sub Court) Vaniyambadi, (hereinafter, referred to as 'the Tribunal') dated 25.10.2021, made in M.C.O.P.No.56 of 2016.

2. The first respondent filed a Claim Petition before the Tribunal stating that on 13.02.2016, at about 1.00 p.m. when the deceased was riding his two wheeler, bearing Regn.No.TN-20-AM-8271, along with one Rajini as a pillion rider, a Tractor, bearing Regn No.TN-63-Y-0671 insured with the appellant herein came in a rash and negligent manner and hit the two wheeler, as a result of which, the left back wheel of the Tractor ran over the head of the deceased and the deceased died on the spot.



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3. The appellant/Insurance Company filed a counter statement, stating that the accident took place only due to the negligence on the part of the deceased as he attempted to overtake the Tractor on the left side in a narrow road, lost control and fell down, due to which, the rear wheel of the Tractor ran over head of the deceased, and hence, they are not liable to pay compensation.

4. The second respondent was shown as the owner in the RC book of the offending Vehicle, whereas, the third respondent was shown as the owner in the Insurance Policy pertaining to the offending vehicle. Hence, both of them were made as parties before the Tribunal. However, both of them remained ex parte before the Tribunal.

5. Before the Tribunal, the first respondent/claimant examined herself as P.W.1 and marked 11 documents as Ex.P.1 to P.11 and on the side of the appellant/Insurance Company, two witnesses were examined and no documents were marked. Ex.X.1 was marked as Court document.



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6. The Tribunal, after analyzing the entire evidence both oral and documentary held that the driver of the Tractor was guilty of negligence and directed the appellant to pay a compensation of Rs.20,93,000/- with interest at the rate of 7.5% from the date of filing the petition till the date of deposit.

7 (a). The learned counsel appearing for the appellant/Insurance Company submitted that the deceased was aged about 15 years and 10 months and not 18 years, as claimed by the first respondent, and to prove the same, the learned counsel also produced Adhaar card of the deceased, wherein, the date of birth of the deceased was mentioned as '09.04.2000'. The learned counsel, therefore, submitted that the compensation awarded by the Tribunal based on the claim petition that the deceased was aged 18 years at the time of accident, which took place on 13.02.2016 years is erroneous.

7 (b). The learned counsel further submitted that the Tribunal ought to have fixed contributory negligence on the part of the deceased,



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for having ridden the two wheeler without licence and overtaking the Tractor from the left hand side. The learned counsel relied on the evidence of P.W.1 and P.W.2 and their admissions made in cross-examination in support of his contention. The learned counsel furthermore submitted that though the first respondent pleaded that the income of the deceased to be at Rs.10,000/-, the Tribunal has fixed higher notional income of Rs.13,302/-, which is excessive and hence, prayed for appropriate reduction.

8. Since respondents 2 and 3 in the instant Appeal, who are first and second respondents in the claim petition remained ex parte before the Tribunal, the learned counsel made an endorsement to dispense with notice to respondents 2 and 3. Hence, notice to respondents 2 and 3 is dispensed with.

9 (a). The learned counsel for the first respondent fairly admitted that the Aadhaar Card produced on the side of the appellant is correct and the date of birth of the deceased is '09.04.2000' as mentioned in the



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Adhaar Card and there is no dispute with regard to the said fact. The learned counsel further submitted that though the first respondent claimed the income to be Rs.10,000/- per month, the Tribunal was right in fixing the notional monthly income of the deceased at Rs.13,302/-, as the monthly income claimed is only indicative in nature and the Tribunal can award just and reasonable compensation more than the amount claimed by the claimant.

9 (b) The learned counsel further submitted that the driver of the Tractor was not examined before the Tribunal; that the evidence adduced on behalf of the first respondent would show that the accident took place only due to the rash and negligent driving of the Tractor-driver and that, the compensation awarded by the Tribunal is also just and reasonable and the same warrants no interference.

10. The questions that arise for consideration in the instant Appeal are as follows:-



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- i) Whether the Tribunal was right in fixing the entire negligence on the part of the driver of the Tractor-vehicle?
- &
- ii) Whether the Tribunal awarded just and reasonable compensation?

11 (a). As regards the first question, on perusal of the records, it is seen that the driver of the Tractor was not examined by the appellant. P.W.2 is an eye witness to the occurrence. That apart, the first respondent has relied upon Ex.P.1, FIR copy, to prove the manner of the accident. It is seen from the evidence of P.W.2 that the accident took place since the Tractor was driven by its driver in a rash and negligent manner and turned the vehicle towards left and the deceased, who attempted to over take the Tractor had hit the Tractor, lost control and fell down from the two wheeler, which resulted in a rear wheel of the Tractor running over the head of the deceased, thereby, causing his death.



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11 (b). Further, it is seen that P.W.2 in his chief examination had stated that the deceased was run over by left rear wheel of the Tractor. It is also seen from the evidence of P.W.2 that the road, in which, accident took place, is a narrow one. Thus, from the evidence of P.W.2 and other evidence on record, it is clear that the accident took place because of the deceased attempting to overtake the Tractor from the left hand side and though it is claimed by P.W.2 that the Tractor was responsible, because, he had taken a sharp left turn, this Court is of the view that the deceased had also contributed to the accident by attempting to overtake the Tractor from the left hand side, as the deceased was hit by a rear wheel of the Tractor.

11 (c). That apart, it is revealed from the Adhaar Card produced on the side of the appellant that the deceased was aged 15 years and 10 months at the time of the accident (i.e.on 13.02.2016), which is not disputed by the learned counsel for the first respondent/claimant. Considering all these aspects, this Court is of view that the deceased also had contributed to the accident, and it would be just and reasonable to fix



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contributory negligence on the side of the deceased at 30%. Hence, first question is answered accordingly.

12 (a). As regards the quantum of compensation, this Court is of the view that though the first respondent had claimed that the income of the deceased was Rs.10,000/-p.m., this Court does not find any error in the award of the Tribunal in fixing the monthly income more than the amount made in the claim petition. Hence, this Court is of the view that the Tribunal can award just and reasonable compensation, notwithstanding the claim made in the claim petition. However, in this circumstances of the case, this Court is of the view that the notional income fixed by the Tribunal at Rs.13,302/- is on the higher side.

12 (b). Considering the age of the deceased, 15 years and 10 months as mentioned in the Adhaar Card and the year of the accident, which occurred on 13.02.2016, this Court is of the view that it would be appropriate to fix Rs.11,000/- as notional income of the deceased. Thus, by fixing the notional monthly income of the deceased at Rs.11,000/-;



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adding 40% towards future prospects; applying multiplier of '18' and deducting 50% towards personal expenses of the deceased, award of compensation under the head, 'Loss of Dependency' is assessed as follows:-

$$\text{Rs.11,000/-} + \text{Rs.4,400/-} = \text{Rs.15,400/-} \times 12 \times 18 \times \frac{1}{2} = \text{Rs.16,63,200/-}$$

12 (c). Therefore, the award of the Tribunal under the head, 'Loss of Dependency' at Rs.20,11,176/- is modified and reduced to Rs.16,63,200/-. Insofar as the award of compensation by the Tribunal under other heads are concerned, the same are hereby confirmed. The second question is answered accordingly.

13. The modified award of the Tribunal by this Court is as follows:-



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<i>SL. No.</i>	<i>Head</i>	<i>Tribunal award</i>	<i>High Court Award</i>	<i>Modified/ confirmed</i>
1	Loss of Dependency	Rs.20,11,176	Rs.16,63,200/-	Modified
2	Funeral Expenses	Rs.16,500	Rs.16,500/-	confirmed
3	Loss of Estate	Rs.16,500/-	Rs.16,500/-	confirmed
4	Filial Consortium	Rs.44,000/-	Rs.44,000/-	confirmed
5	Ambulance Expense	Rs.5,000/-	Rs.5,000/-	confirmed
	Total	Rs.20,93,176	Rs.17,45,200/-	Modified
	Less Contributory negligence at 30%		Rs.5,23,560/-	
	Net Compensation payable		Rs.12,21,640/-	Reduced by Rs.8,71,536/-

14. Thus, the compensation awarded by the Tribunal at Rs.20,93,000/- is hereby reduced to Rs.12,21,640/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. Since this Court fixed the contributory negligence on the part of the deceased at 30%, the appellant/Insurance Company is directed to deposit 70% of 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. On such deposit, the first respondent/claimant is entitled to withdraw the same, less the amount if



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any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.56 of 2016, on the file of the Motor Accident Claims Tribunal (Sub Court)Vaniyambadi, if the entire award has already been deposited by them.

15. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

20.09.2023

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Index : yes/no

To

The Sub Court,

Motor Accident Claims Tribunal, Vaniyambadi.



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Sunder Mohan,J.
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