



C.M.A.No.502 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.502 of 2022

1.Mahalakshmi
2.Nathipriya
3.Lakshmiprabha

... Appellants

Versus

1.Vijayakumar

2.The Manager,
The National Insurance Company Ltd.,
KRT Building, No.33, Bharathidasan Salai,
Promanade Road, Contonment,
Tiruchirapalli.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, seeking to set aside the judgment and decree dated 28.09.2021 passed in M.C.O.P. No.333 of 2019, on the file of the Motor Accident Claims Tribunal and Principal District Judge, Perambalur.

For Appellants	: Mr.S.P.Yuvaraj
For R1	: No Appearance
For R2	: Mr.S.Arunkumar

JUDGMENT

This appeal has been filed by the appellants/claimants challenging the compensation awarded by the Tribunal in M.C.O.P.No.333 of 2019, dated 28.09.2021.



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2.The claim petition was filed stating that on 13.04.2019, at about 9.50 p.m., while the deceased was riding his TVS XL Heavy Duty two wheeler bearing Registration No.TN 46 M 7276 on the Trichy-Chennai NH 45 Road, near RTO Office opposite to Selvam Mess, the 1st respondent's Torus lorry bearing Registration No.TN 30 X 6448, which came in the same direction behind the deceased, in a rash and negligent manner and dashed against the deceased and caused the accident. Due the said accident, the deceased sustained fatal injuries and died on the spot. Thus, the appellants are entitled for compensation.

3.The 1st respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal.

4.The 2nd respondent/Insurance Company filed a counter denying all the averments made in the claim petition and stated that the deceased suddenly took a short turn, which resulted in the accident; that the deceased did not possess valid driving license and did not wear helmet at the time of accident; that the 2nd respondent is not liable to pay any compensation to the appellants; and that in any case, the compensation claimed is excessive and prayed for dismissal of the claim petition.



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WEB COPY 5.Before the Tribunal, the appellants/claimants examined three witnesses and marked Ex.P.1 to Ex.P.9 on their side. The 2nd respondent/Insurance Company examined two witnesses and marked Ex.R1 to Ex.R3.

6.The Tribunal after considering the oral and documentary evidence held that since the deceased was not having a driving license to ride the two wheeler and he sustained fatal injuries; that Section 163-A of the Motor Vehicles Act (hereinafter referred as 'the Act'), has to be invoked and directed the 2nd respondent to pay a compensation of Rs.5,00,000/- to the appellants.

7.Aggrieved over the award passed by the Tribunal, the appellants/claimants filed the present appeal seeking for enhancement of compensation.

8(a).Learned counsel for the appellants submitted that the Tribunal had awarded compensation under Section 163-A of the Act by holding that accident took place not only due to the negligence of the deceased



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but also due to the negligence of the driver of the offending vehicle viz., lorry. He further submitted that the claim petition was filed under Section 163-A of the Act, but the Tribunal ought to have awarded compensation under Section 166 of the Act in view of the evidence adduced before the Tribunal.

8(b).Learned counsel also submitted as regards quantum of compensation that the appellants had established the fact that the deceased was working as a driver and he possessed valid driving license for driving heavy vehicles, which was marked as Ex.P5. The appellants had also examined the employer of the deceased as P.W.3 and marked Ex.P9-salary certificate showing the income of the deceased as Rs.30,000/- per month. The learned counsel therefore submitted that the Tribunal ought to have applied the provision of Section 166 of the Act, to award compensation.

9(a).Per contra, learned counsel appearing for the 2nd respondent/Insurance Company submitted that the claim petition is not maintainable since the appellants have sought for compensation under both the Sections 163-A and 166 of the Act. Learned counsel further



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submitted that it is well settled that the claim petition has to be filed under any one of the provisions of the Act and not under both provisions when they specifically pleaded that the driver of the offending vehicle is liable for negligence.

9(b). Learned counsel further submitted that the award of the Tribunal is also erroneous since admittedly the deceased was earning more than Rs.20,000/- per month, Section 163-A of the Act would not be applicable and hence, he prayed for remitting the case to the Tribunal for proper adjudication.

10. The questions that arise in the present appeal are whether the Tribunal ought to have awarded compensation under Section 166 of the Act? If so, as to what is the quantum of compensation to be awarded to the appellants?

11. The appellants examined P.W.2-eye witness to the occurrence. According to P.W.2, the deceased rode the two wheeler on the left side of the road and the driver of the lorry came from behind in a rash and negligent manner and rammed against the two wheeler. R.W.1-driver of



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the lorry was examined on the side of the 2nd respondent. R.W.1 in his deposition would say that the deceased suddenly took a sharp turn without any signal; that inspite of his best effort he could not control the lorry, which resulted in the accident. It is also seen that the rough sketch had not been marked on either side. Considering the evidence adduced on either side, it is clear that both deceased - the rider of the two wheeler, and the driver of the lorry had contributed to the accident. Further, this Court finds that the claim made by the appellants is erroneous in as much as compensation was claimed under Section 140, 142, 149, 163A and 166 of the Act. The nature of claim under Section 163-A and Section 166 of the Act are different and cannot co-exist. The Tribunal ought not to have accepted the claim petition as such and ought to have given an option to the appellants to choose one of the provisions. Further in the facts, the Tribunal erred in awarding compensation by invoking Section 163-A of the Act. The Tribunal ought to have determined the compensation in terms of Section 166 of the Act since there is evidence adduced on either side on the question of negligence. The accident took place in the year 2019 and already four years have elapsed. Therefore, this Court is of the view that it would be futile exercise to remand the matter to the Trial Court to determine just compensation. Hence, this



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Court is inclined to determine the question of negligence and compensation on the basis of the available evidence.

12.As stated earlier, the evidence of P.W.2-eye witness is to the effect that the deceased was riding his two wheeler on the left side of the road and the offending vehicle viz., lorry came from behind in a rash and negligent manner and dashed against the two wheeler. The evidence of R.W.1-driver of the lorry is to the effect that the deceased took a sudden turn and came in front of the lorry and hence, he could not control the lorry and the accident took place. It is also seen that the deceased did not possess valid two wheeler license though he had license for driving heavy vehicles. P.W.2's version also cannot be the basis to decide the question of negligence as even according to him the lorry was going in front of him. Considering the deposition of both P.W.2 and R.W.1, and other evidence on record, this Court is of the view as stated earlier that the rider of the two wheeler and the driver of the lorry had both contributed to the accident. The lorry driver ought to have been careful even accepting his version that the deceased had taken a sharp right towards the road. The accident had taken place predominantly due to the negligence of the lorry driver. Hence, in the facts of the case it would be



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just and reasonable to fix the contributory negligence on the side of the deceased as 30% and the driver of the lorry as 70%.

13.As regards the compensation, this Court is of the view that the deceased had driving license for heavy vehicles which was marked as Ex.P5. P.W.3 is the employer of the deceased and he had deposed that the deceased was earning a sum of Rs.20,000/- per month. It is seen that Ex.P9-salary certificate was issued after the demise of the deceased. Apart from that no bank statement or other records has been marked on behalf of the appellants to prove the income of the deceased Therefore, considering the avocation of the deceased, his age and the year of the accident, this Court is of the view that it would be just and reasonable to fix Rs.15,000/- per month as notional income of the deceased. As per the driving license, the age of the deceased was 45 years at the time of accident. Therefore, he is entitled to 25% future prospects and the multiplier applicable is 14. Thus the appellants are entitled to compensation under the head loss of income in the following manner:

$\text{Rs.15,000/-} + 25\% \text{ (future prospect)} = \text{Rs.18,750/-}$

$\text{Rs.18,750} \times 12 \times 14 \times \frac{2}{3} \text{ (1/3 rd has to be deducted towards personal expenses)} = \text{Rs.21,00,000/-}$.

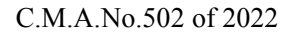


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14.The 1st appellant is entitled for Rs.40,000/- towards loss of consortium and the appellants 2 and 3 are entitled for Rs.40,000/- each towards parental consortium. Further a sum of Rs.15,000/- each towards loss of estate and funeral expenses are awarded. Thus, the consolidated amount of Rs.5,00,000/- awarded by the Tribunal under Section 163-A of the Act, is modified as follows:

S. No	Description	Amount awarded by this Court (Rs)
1.	Loss of Income	21,00,000
2.	Loss of Consortium	40,000
3.	Parental Consortium for appellants 2 and 3	80,000
4.	Loss of Estate	15,000
5.	Funeral Expenses	15,000
	Total	22,50,000
	After deducting 30% towards contributory negligence	15,75,000

15.With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,00,000/- is hereby enhanced to Rs.15,75,000/- 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 2nd respondent/Insurance Company is



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Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

1. The Subordinate Judge,
The Motor Vehicle Accident Tribunal,
Uthangarai.
2. The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

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