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CMA.No.1302 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.04.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.1302 of 2018

1.M.Rani

2.M.Mohan

.. appellants

Vs.

1.R.Palanisamy (Previous owner)

2.M/s.Reliance General Insurance Co.,Ltd.,

“Reliance House” 6th Floor, No.6, Haddows Road,
Nungambakkam, Chennai 600 006.

3.K.Krishnasamy (Present owner)

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 24.08.2017 made in M.C.O.P.No.835 of 2010 on the file of the Motor Accidents Claims Tribunal/II Judge, Small Causes Court, Chennai.

For appellants : Mr.E.Rajadurai

For Respondents : Mr.M.B.Gopalan Associates for R2

No appearance – R1 & R3

J U D G M E N T

This appeal has been filed by the appellants/claimants seeking enhancement of compensation under the impugned award dated 24.08.2017 made in M.C.O.P.No. 835 of 2010 on the file of the Motor Accidents Claims Tribunal/II Judge, Small Causes Court, Chennai.



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2. The case of the claimants / appellants is that on 27.01.2010 at about 20.30 hours, while the deceased was riding motor cycle bearing Regn.No.TN-22-BU-5288 Hero Honda at Tambaram to Somangalam road near J.R.K.petrol bunk, a lorry bearing Regn.No.TN-21-AY-7299 driven by its driver in a rash and negligent manner, in front of the deceased, has suddenly stopped without any signal resulting in the motor cycle dashing against the back side of the lorry causing grievous injuries to the deceased. Due to the said impact, the deceased sustained grievous injuries. Immediately after the accident, he was taken to Parvathi Hospital for first aid treatment and admitted as in-patient from 27.01.2010 to 06.02.2010 for further care. Claiming that the driver of the lorry is solely responsible for the accident, the deceased and the appellants/claimants have filed a claim petition claiming a sum of Rs.6,00,000/- After discharge from the Hospital also, the deceased taken continuous treatment from various hospitals as in-patient and outpatient, but he was expired on 08.08.2012.

3. The Tribunal, based on the oral and documentary evidences has observed that the driver of the respondents 1 and 3 and deceased are responsible for the accident and fastened contributory negligence on the and the driver of the lorry and the rider of the motor cycle and ultimately



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quantified the total compensation at Rs.1,12,000/- with interest at the rate of 9% per annum from the date of petition till the date of deposit with contributory negligence fixed on the deceased and driver of the lorry in the ratio of 50%:50%. Aggrieved against the same, the claimants / appellants are before this Court.

4. The learned counsel for the claimants / appellants has submitted that the judgment and decree of the Tribunal are contrary to law, the weight of evidence and probabilities of the case. The Tribunal has failed to see that the perusal of Exs.P2, P10 and P11 has clearly established that the death is due to the injuries sustained by the deceased who is son of the appellants caused by the accident. It failed to see that MV Act is a statutory remedy of a special forum and it is on a higher pedestal than contractual one. It failed to see that the compensation accrued due to the death of the son of the appellants goes to the estate of the deceased and so has to be paid to the legal heirs. It failed to see that Ex.P14 issued by PW3 is based on analysis of all the hospital records and its findings. It failed to see that the medical expenses of Rs.44,197/- in Ex.P11 are acceptable and the rejection of the medical bills relating to the year 2012 is not based on sound reasons. It erred in granting Rs.10,000/- towards pain and sufferings; Rs.12,000/-



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towards loss of earning; Rs.5000/- towards transport and extra nourishment

and Rs.2000/- towards attender charges which are on the meagre side. It

failed to see that the contributory negligence is unwarranted in the facts and circumstances of the case and mere non possession of driving license by the deceased cannot be construed as contributory negligence. It failed to see that contributory negligence can be fixed only if there is a pleading and proof of the same by the 2nd respondent and the same is well settled by several authorities of Supreme Court. In any event, the Tribunal erred in awarding compensation at Rs.1,12,000/- as against the claim of Rs.6,00,000/-. Hence, he prays for enhancement of the Award amount.

5. Before the Tribunal, the appellants/claimants have examined three witnesses and marked PW1 to PW3 and filed fourteen documents which were marked as Ex.P1 to Ex.P14. On the side of the respondents, neither witness was examined nor filed any documents.

6. Per contra, the learned counsel for the second respondent / Insurance Company has submitted that the Tribunal has granted reasonable compensation under various heads and no modification needs to be granted.

Hence, he prays to dismiss the petition.



7. This Court has considered the above submissions made by the learned counsel for the appellants and the learned counsel for the second respondent and perused the materials available on record.

8. Based on the evidences of P.W.1 to PW3 and perusing the exhibits in Ex.P1/FIR copy and the corroboration of evidence of PW1 with the Ex.P1, the Tribunal has fastened the liability on the driver of the respondents 1 and 3 and the deceased and thus fixed contributory negligence on them in the ratio of 50% : 50%.

9. As far as the quantum of compensation arrived at by the Tribunal is concerned, to prove the avocation and income of the appellants, P.W.1 has been examined, who deposed that he was engaged as Sub-Contractor, Airport Chennai and was earning Rs.7,500/- per month. On perusal of Ex.P2, Ex.P10 and Ex.P11, the Tribunal came to the conclusion that there is no nexus between the accident and the death. On perusal of records, it is seen that the deceased was admitted as in-patient and taken treatment for injuries “compound comminuted depressed fracture frontal bone, left side and fracture mandible and bilateral maxilla. Fracture base 5th metacarpal bone left hand. Due to the grievous injuries sustained by the deceased, he



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had taken assistance of the attender for five months for which the Tribunal has wrongly awarded a meagre sum of Rs.2,000/- towards attender charges.

Hence, the award granted under the head of attender charges is enhanced to Rs.15,000/-. From the records, it is also seen that he has sustained grievous injury of fracture of bones and multiple injuries all over the body but the Tribunal has awarded a meagre sum of Rs.10000/- towards Pain and sufferings and hence the same needs revisit. Hence, a sum of Rs.30,000/- is fixed by this court towards Pain and sufferings. This court is of the considered opinion that the accident took place on 27.01.2020 and the deceased died on 08.08.2012, for nearly 2½ years, he was under treatment. During the said treatment period, he has incurred transport expenses and has taken nutritious food and hence, the same may be fixed at Rs.10,000/- each towards Transport and Extra Nourishment.

10. This Court is of the considered view that due to the nature of grievous injuries sustained by the deceased and period of treatment he was admitted in the hospital as in-patient and continuous treatment as out patient, this court is inclined to take five months and thus arrived at Rs.30,000/- (6000 x 5 months) towards loss of income.



11. Insofar as the other head such as Medical Expenses, the assessment of the compensation awarded by the Tribunal is based on medical bills, it does not call for any interference by this Court.

12. In fine, the re-structured compensation, item-wise, would be thus:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Medical bills	77,420/-	77,420/-
Attender charges	2,000/-	15,000/-
Loss of income	12,000/-	30,000/-
Pain & suffer	10,000/-	30,000/-
Transport to Hospital	5000/-	10,000/-
Extra Nourishment	5,000/-	10,000/-
Total	1,11,420/-	1,72,420/-

Rounded off to Rs.1,73,000/-

13. In the decision rendered in *Dinesh Kumar,J. @ Dinesh.J. Vs. National Insurance Co., Ltd & Others* reported in *2018 (1) TN MAC 34 (SC)*, it is held that mere failure to produce driving license not sufficient to draw adverse inference in respect of Contributory negligence and hence contributory negligence fixed on the deceased is set aside.



WEB COPY 14. In view of the above decision, the contributory negligence fixed on the deceased is set aside. Hence, the entire negligence is fixed on the driver of the lorry and accordingly the Insurance Company is liable to pay the entire compensation amount to the claimants/appellants

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15. In the result,
a) this Civil Miscellaneous Appeal filed by the claimants / appellants is **partly allowed**, by enhancing the total amount of compensation from Rs.1,12,000/- to Rs.1,73,000/- along with interest at the rate of 9% p.a. from the date of filing of the petition till the date of deposit. . It is made clear that for the enhanced amount of Rs.61,000/-, the interest rate of 9% shall be calculated from the date of filing of this appeal.

(b) The second respondent/Insurance Company is directed to deposit the enhanced award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of M.C.O.P.No.835 of 2010 within a period of six weeks from the date of receipt of a copy of this Judgment. Needless to state that the appellants shall pay necessary court fees for the enhanced compensation amount before receiving the copy of this judgment.



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(c) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the appellants/claimants through RTGS within a period of two weeks thereafter. No costs.

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Index : Yes/No

Internet : Yes/No

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To

1. The Motor Accidents Claims Tribunal,
/II Judge, Small Causes Court, Chennai.

2. The Section Officer,
V.R.Section,
High Court, Madras.



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A.A.NAKKIRAN, J

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