



CMA.No.702 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 01.11.2023

CORAM: JUSTICE N.SESHASAYEE

CMA.No.702 of 2022
& Cros.Obj.No.43 of 2023
& CMP.Nos.5117/2022 & 19911/2023

CMA.No.702 of 2022

The Branch Manager,
The New India Assurance Co. Ltd.,
Rayakottai Road, Krishnagiri 635 001.

... Appellant

-Vs-

1.Indhumathi
2.Minor Sindhu
3.Minor Srikanth
Minors 2 and 3 rep. by their N.F.G
and Grand-mother Rani
4.D.Venkatappa

...Respondents

Cros.Obj.No.43 of 2023

1.Indhumathi
2.Minor Sindhu
3.Minor Srikanth
(minors 2 and 3 rep by their next friend
guardian and grand mother Rani)

...Cross Objectors

Vs.

1.The Branch Manager,
The New India Assurance Company Limited,
Rayakottai Road, Krishnagiri – 635 001.



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2.D.Venkatappa.

.... Respondents

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Prayer in CMA.No.702 of 2022: Civil Miscellaneous Appeal filed under Section 173 of the M.V.Act, 1988, against the Judgment and Decree in MCOP.No.404 of 2020 on the file of the Motor Accidents Claims Tribunal (Special District Court for Motor Accident Claim Cases) Krishnagiri dated 14.6.2021.

Prayer in Cros.Obj.No.43 of 2023: Cross Objection filed under Section Order 41 Rule 22 of CPC, for enhancement of the compensation awarded in the Judgment and Decree dated 14.06.2021 made in M.C.O.P.No.404 of 2020 on the file of Motor Accident Claims Tribunal/Special District Judge, Krishnagiri.

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For Appellant : Mr.M.Krishnamoorthy
For R1 to R3 : Mr.S.P.Yuvaraj
For R4 : ex-parte

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For Appellants : Mr.S.P.Yuaraj
For R1 : Mr.M.Krishnamoorthy
For R2 : ex-parte



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JUDGMENT

In a road accident that took place on 18.05.2018, a motor cyclist who ramped on to a lorry that was going in front of him died. Soon after the accident he was removed to the Government Hospital, Krishnagiri, and was later removed to a hospital in Bangalore, where he died on the next day.

2.Claiming compensation against the owner (who is also the driver of the lorry) at the relevant time and the insurer of the lorry, the dependents of the victim preferred MCOP.No.404 of 2020 before the Motor Accident Claims Tribunal (Special District Court for Motor Accident Claims Cases), Krishnagiri. The allegation of the claimants was that the accident had occasioned when the lorry suddenly applied the breaks without any indication. The Tribunal had, however, apportioned the negligence as between the victim and driver of the lorry in the ratio of 10%:90%.

3.The victim was 20 years old and was stated to be newly married and was a mason at the time of the accident. The Tribunal had notionally fixed his income at Rs.9,000/- per month, added another 40% of it



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towards future prospects, applied 18 as the multiplier and deducted 1/3rd towards the personal expenditure of the victim and added the compensation on other conventional heads and deducted 10% towards contributory negligence of the victim of the accident and arrived at a total compensation of Rs.17,31,960/-. Of this, the major component is under the head of dependency and towards it, the Tribunal had awarded a sum of Rs.18,14,400/-. This is now under challenge at the instance of the Insurance Company of the lorry.

4.The claimants on their part had preferred their cross-objection seeking enhancement of compensation.

5.The learned counsel for the appellant-Insurance Company submitted;

- a) that the victim did not have a valid driving license;
- b) That he did not wear helmet;
- c) and that he had driven the vehicle with zero sense of anticipation and indeed, according to the driver-cum-owner of the lorry, who was examined as R.W.1, the motor cyclist appeared to have come at a hectic speed to ramp on to the rear side of the lorry, even as he



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was driving it.

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6.Shifting his focus to the quantum of compensation, the learned counsel for the appellant/insurance company submitted that whether the victim was married to the first claimant is doubtful, since no documents have been produced to substantiate it. This is significant in the context for determining the amount that might have to be deducted towards the personal expenditure of the victim; whether it is 1/3rd or 1/2th.

7.Per contra, the learned counsel for the respondents-cum-cross objector made the following submissions;

- a) that in the claim petition, the lorry driver had admitted that he applied sudden breaks;
- b) so far as the marital status of the first claimant to the victim is concerned, to investigate the same goes beyond the very scope of this litigation.
- c) So far as the notional income as fixed by the Tribunal is concerned, Rs.9,000/- per mensum for a mason is too low. Even at Rs.600 per day for 25 days work a month, he would have easily



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made Rs.15,000/-.

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8.Rival submissions are carefully weighed. So far as the manner in which the accident had occasioned, the claimants relied on Ex.PW2, who claims himself to be the eye witness to the accident. Except testifying before the Tribunal, PW2 had played very little role after the accident. Therefore, to rely exclusively on the testimony of PW2 will not be appropriate. Turning to the accident *per se* even if the driver of the lorry has applied the breaks suddenly, it does not imply one who goes behind the lorry should necessarily go and ramp on the lorry. After all, one who is driving behind the lorry cannot have the visibility to see what is happening in front of the lorry. There may be any number of contingency or emergency that may happen in front of the lorry and any driver in such circumstances would necessarily will not go for the breaks, unless he is keen to murder the person coming behind him. Anyone coming behind a heavy vehicle necessarily should anticipate some emergency which he may encounter. Therefore, even if the driver of the lorry has applied the breaks suddenly as has been contended by the claimants yet, the victim of the accident had all the opportunity to avoid the accident, if only he



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had cared to discharge his duty to care. He apparently, had forgotten his duty to care and had invited the end that he admittedly met. In these circumstances, this Court considers that it would be appropriate to contribute 40% negligence to the victim.

9.Turning to quantum, this Court considers fixing a notional income of Rs.12,000/- a month for a mason in 2016 will be reasonable. It is in the experience of this Court that it can be stated that nobody can avail the services of a mason without at least paying Rs.600 a day anywhere in the State in 2016. Adding another 40% to the same and applying a multiplier of 18, the total sum arrived is Rs.36,28,800/- and deducting 1/3rd towards the personal expenditure of the victim, the net sum arrived at is Rs.24,19,200/-. Here, this Court considers that seeking proof of marriage of the first claimant to the petitioner is outrageous. After adding the compensation awarded on other conventional heads, the total compensation amount arrived is Rs.25,39,200/-. Out of which, 40% is deducted towards contributory negligence of the victim and accordingly, the net value of the compensation is arrived at Rs.15,23,520/-.



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10. In conclusion, the appeal and the cross-objection are partly allowed but, the net effect of this decision is that the appellant has gained. It is represented that the appellant had already deposited 50% of the compensation amount as was originally determined by the Tribunal. The appellant is now required to deposit the balance amount with interest at 7.5% within a period of six (6) weeks from the date of receipt of a copy of this order. The award shall be apportioned in the same ratio in which the Tribunal has apportioned it. The compensation amount pertaining to minor Sindhu and minor Srikanth are directed to be deposited in a nationalised Bank in the interest bearing Fixed Deposit till the minors attain the age of majority and the grand mother of the minors viz., Rani is permitted to withdraw the accrued interest on the deposit of the minors once in six months. No costs. Consequently, the connected miscellaneous petition are closed.

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To

- 1.The Motor Accidents Claims Tribunal,
Special District Court for Motor Accident Claim Cases,
Krishnagiri.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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N.SESHASAYEE, J.,

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