



C.M.A. No. 1194 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1194 of 2014

1. Rajeswari
 2. Dharani
 3. Minor Lalithkumar
 4. Subbayi
- ... Appellants/ Petitioners

Vs.

1. Karthik
 2. M/s. New India Assurance Co. Ltd.,
Represented by its Divisional Office,
D.No.133/31-1,
Sedukrishna Trade Centre, 2nd Floor,
Trichy main road,
Gugai,
Salem-636004
- ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 17.12.2020 passed in M.C.O.P. No. 84 of 2019 on the file of the Special District Judge, Motor Accident Claims Tribunal, Salem.

For Appellant	:	Mr. M. Guruprasad
For R1	:	No Appearance
For R2	:	Mr. C. Ramesh Babu



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JUDGMENT

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This appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No. 84 of 2019 on the file of the Special District Judge, Motor Accident Claims Tribunal, Salem, dated 17.12.2020, wherein the Tribunal has awarded a total compensation for a sum of Rs.12,60,096/- to the claimants along with the interest @ 7.5% per annum from the date of filing of claim petition till the date of realization.

2. For the sake of convenience, the parties are referred herein according to their litigative status before the Tribunal.

3. The claimants herein are the wife, daughter, son and mother of the deceased Jayasankar, who died in a road accident, dated 20.08.2018. According to them, the deceased was riding a two wheeler bearing Registration No. TN-54-J-1203 on Paramathi to Tiruchengode road on 20.08.2018, at about 6:15PM, while he was nearing Vasanthapuram Petrol Bunk at Pillur pirivu road, a two wheeler bearing Registration No.TN-47-AT-0354 driven by its rider in a rash and negligent manner dashed against the two wheeler of the deceased, which resulted in causing injuries to the



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deceased, subsequently, he succumbed. A criminal case in Cr. No.201 of 2018 U/s. 279 and 304(A) of I.P.C. was also registered against the rider of the two wheeler bearing Registration No.TN-47-AT-0354 by the Pallipalayam Police. The deceased Jayasankar was aged about 44 years at the time of accident and he was working as a lorry driver and was earning a sum of Rs.15,000/- per month. For the loss of deceased Jayasankar, the claimants have filed a claim petition seeking compensation for a sum of Rs.40,00,000/- under section 166 of the Motor Vehicles Act, 1988.

4. The first respondent is the owner and the second respondent is the insurer of the offending two wheeler bearing Registration No.TN-47-AT-0354. The first respondent has not contested the claim petition and remained Ex-parte. The second respondent - Insurance company has filed a counter and contended that the accident was taken place due to the negligent act on the part of the deceased, who has suddenly crossed the road without noticing the lorry and thereby invited the accident. The FIR was lodged against the driver of the first respondent for the purpose of claim. The amount of compensation claimed under various heads are also high, hence prays to dismiss the claim petition.



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5. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P.1 to P.18 were marked, on the side of the respondent, no witnesses were examined and no exhibits were marked.

6. Based on the evidence placed on record, the Tribunal in point Nos.1 and 2, has held that the rash and negligence on the part of the driver of the offending vehicle bearing Registration No.TN-47-AT-0354 is responsible for the accident and also fixed contributory negligence of 15% on the part of the deceased. In point no.3, the Tribunal has quantified and granted a compensation for a sum of Rs.12,60,096/- to the claimants along with the interest @ 7.5% per annum from the date of filing of claim petition till the date of realization.

7. Aggrieved over the award, the claimants have filed this appeal seeking enhancement of compensation. The respondents have not filed any appeal against the award.

8. The learned counsel appearing for the claimants has



submitted the the Tribunal has not properly appreciated the evidence of

P.W.2 - eyewitness and contended that the accident was occurred only due to the rash and negligent driving by the driver of the offending vehicle and submitted that the deceased in this case has not contributed to the accident, but the Tribunal has wrongly held that the deceased has also contributed to the accident and fixed contributory negligence of 15% on the part of the deceased, which is based on no evidence, hence prays to set aside the order of contributory negligence fixed upon the deceased. He further submitted that the Tribunal without considering the proof of the claimants regarding the avocation of the deceased, fixed notional income of Rs.10,000/- and the quantum of compensation awarded under other heads is also on the lower side, hence prays to modify and enhance the quantum of compensation awarded by the Tribunal.

9. The learned counsel appearing for the insurance company has submitted that the Tribunal has rendered categorical finding regarding the contributory negligence in paragraph no.10 of the award and also the Motor Vehicle Inspection Report corroborate the case of the insurance company that the deceased also contributed to the occurrence, hence, prays to confirm



the finding of contributory negligence on the part of the deceased by the Tribunal. He has also submitted that the compensation awarded under various heads by the Tribunal is just and fair, hence, prays to confirm the same.

10. Heard the submissions made on both sides and perused the materials available on record:

11. The claimants have examined P.W.2 as eyewitness and he has deposed that he has seen the occurrence and stated that on 20.08.2018 at about 06:15 PM, on Paramathi to Tiruchengode road near Pillur pirivu road, the deceased was awaiting with his two wheeler to cross the road from left side to right side, at that time, a two wheeler bearing Registration No.TN-47-AT-0354 came in high speed and hit on the deceased. Due to the impact, the helmet of the deceased was thrown and he has sustained grievous injuries and immediately he was taken to the hospital. In the cross examination also he has adduced the same. The respondent - insurance company has not adduced any contra evidence to disprove the evidence of P.W.2.



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12. Admittedly, the F.I.R. was also registered against the rider of the two wheeler, which belongs to the first respondent. The Tribunal has held that the damages caused to the vehicles corroborating the case of the respondents, even though the respondents has not adduced any evidence. Further held that the deceased succumbed to head injury of not wearing helmet and fixed contributory negligence of 15% on the part of the deceased. The Tribunal has not properly appreciated the evidence produced on behalf of the claimants more particularly, the evidence of P.W.2 – eyewitness, who has categorically stated that the helmet of the deceased was thrown away during the occurrence. Hence, the finding of the Tribunal that the negligence on the part of the deceased has also contributed to the accident is not proper and the same is liable to be set aside.

13. With regard to the quantum of compensation awarded by the Tribunal, the claimants have examined P.W.3, who claims to be the lorry owner and he has deposed that he used to engage the deceased regularly as his lorry driver and was paying Rs.16,000/- as monthly salary and Rs.4,000/- as betta, however, the P.W.3 has not produced any documentary



evidence to show that he is the employer of the deceased and subsequently, the Tribunal has rejected the evidence of P.W.3 that the deceased was a lorry driver and earning Rs.16,000/- per month, hence the Tribunal has notionally fixed the income of the deceased as Rs.10,000/- per month. However, the claimants have marked the driving licence of the deceased as Ex.R.1, which shows that the deceased has the licence to drive heavy vehicles, which supports the case of the claimants that the deceased was a heavy vehicle driver. This Court is of the view that in this case, fixing Rs.15,000/- as notional income for the deceased would be proper and just. Accordingly, the notional income of the deceased fixed by the Tribunal is modified to Rs.15,000/- per month.

14. The Tribunal has rightly followed the dictum as laid down in *National Insurance Co. Ltd., vs. Pranay Sethi and other* reported in *[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]* and fixed 40% as future prospectus and as per *Sarla Verma and others Vs. Delhi Transport Corporation and others* reported in *[2009 ACJ 1298 SC : 2009 (6) SCC 121]*, the multiplier is fixed as '15' by considering the age of the deceased at the time of the accident. The Ex.P.7, the driving licence of the deceased, in



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which the date of birth of the deceased is mentioned as 17.04.1974, hence, the deceased is aged about 44 years at the time of accident, hence, this Court finds no infirmity in the above fixing of future prospectus and multiplier adopted by the Tribunal and hence, confirms the same. In this case, the claimants are four in number (i.e.,) wife, daughter, son and mother of the deceased, hence, this Court is inclined to modify the deduction of one-third (1/3) from the deceased monthly income towards his personal and living expenses, as fixed by the Tribunal to one-fourth (1/4). Hence, the compensation under loss of dependency is assessed as follows:

Annual income (Rs.15,000/- x 12)	= Rs.1,80,000/-
Future prospects @ 25%	= Rs.45,000/-
Yearly income of the deceased	= Rs.2,25,000/-
Yearly contribution to his family (deduction of 1/4)	= Rs.1,68,750/-
Applicable Multiplier	= 14
Total Compensation (Rs.1,68,750/- X 14)	= Rs.23,62,500

15. The Tribunal has awarded Rs.40,000/- towards loss of spouse consortium but as per the Hon'ble Apex Court in *Magma General Insurance Co. Ltd., vs Nanu Ram [2018 ACJ 2018]*, all the claimants are entitled to consortium. In this case, the claimants are the wife, children and



mother of the deceased Jayasankar, hence, this Court is inclined to grant the claimants spouse consortium, parental consortium and filial consortium to the wife, children and mother of the deceased, respectively as per the Apex Court Judgment stated supra. Accordingly, all the claimants are entitled to Rs.40,000/- each under the head loss of consortium. Whereas the other heads are concerned, the Tribunal has awarded a just compensation and this Court is inclined to confirm the same.

16. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	11,90,096/-	23,62,500/-	Enhanced
2.	Loss of consortium	40,000/-	1,60,000/-	Enhanced
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total Compensation	12,60,096/-	25,52,500/-	Enhanced

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,60,096/- is hereby enhanced to Rs.**25,52,500/- [Rupees Twenty Five Lakhs Fifty Two**



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Thousand and Five Hundred only] together along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realization, excluding the default period, if any. The respondent is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P. No.84 of 2019 on the file of the Special District Judge, Motor Accidents Claims Tribunal, Salem. On such deposit, the claimants/ appellants herein are permitted to withdraw the award amount now determined by this Court along with interest and costs as per the apportionment fixed by the Tribunal. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

12.10.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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K. RAJASEKAR, J.

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To:

1. The Special District Judge,
Motor Accident Claims Tribunal,
Salem.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

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