



C.M.A.No.689 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.689 of 2023

1.Palaniammal

2.Thathan

...Appellants/Petitioners

Vs.

1.V.Dharman

2.R.Saravanan

3.M/s.The New India Assurance Company Ltd.,
Having Office at, Sethu Krishna Trading Centre,
No.133/31 – A, II Floor, Trichy Main Road, Gugai,
Salem – 636 006.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.12.2022 in M.C.O.P.No.207 of 2022, on the file of the Motor Accidents Claims Tribunal, (Special District Judge) Salem.



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For Appellants : Mr.R.Nalliyappan

For Respondents : No appearance for R1 and R2
M/s.A.Salomi for R3

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 16.12.2022 made in M.C.O.P.No.207 of 2022 on the file of the Motor Accident Claims Tribunal, (Special District Judge) Salem.

2. The appellants filed M.C.O.P.No.207 of 2022 on the file of the Motor Accident Claims Tribunal, (Special District Judge) Salem claiming a sum of Rs.1,00,00,000/- as compensation for the death of one T.Arulkumar, who died in the road accident that took place on 09.09.2021.

3. The appellants are the parents of the deceased. According to the appellants on 09.09.2021 at 6.45 P.M., when the deceased was driving in his Bajaj Pulsar bearing Reg.No.TN 24 AB 5062 and crossing the National Highway from Namakkal to Salem at Puduchatiram Junction, an



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omni car bearing registration No.TN 09 Q 3601, driven in a rash and negligent manner, dashed against the two wheeler. As a result, the said Arulkumar sustained grievous injuries and was declared as brought dead in the Hospital. Hence, the appellants filed a claim petition claiming compensation against the respondents.

4. The 1st respondent is the owner, the 2nd respondent is the driver, and the 3rd respondent is the insurer of the offending vehicle.

5. The 1st respondent remained exparte before the Tribunal.

6. The 2nd respondent filed counter statement denying all the averments made by the appellants in the claim petition and further stated that he was not negligent and in any case, the claim is excessive; that even if it is held that the accident took place on account of his negligent driving, the third respondent as an insurer of the car was liable to pay the compensation and prayed for dismissal of the claim petition.



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7. The 3rd respondent filed a counter statement denying all the averments made by the appellants in the claim petition and further stated that the accident took place on account of the negligent riding of the two-wheeler and the deceased was not wearing a helmet at the time of the accident; that the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

8. Before the Tribunal, the 1st appellant examined herself as P.W.1 and one Arul, pillion rider and eye witness, to the accident was examined as P.W.2. Seventeen documents were marked as Exs.P.1 to P.17. The respondents neither marked any documents nor examined any witness on their side. Photo copy of the Aadhar card of Arul (through P.W.2) was marked as Ex.X1.

9. The Tribunal, after considering the oral and documentary evidence, found that the deceased had also contributed to the accident and fixed contributory negligence at 20% on the deceased and fixed 80% negligence on the driver of the car, insured with the 3rd respondent. The Tribunal thus,



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awarded a compensation of Rs.10,19,200/- after deducting 20% towards contributory negligence. The Tribunal directed that respondents 1 to 3 are jointly and severally liable to pay a sum of Rs.10,19,200/- as compensation to the appellants.

10. Aggrieved by the said order, the appellants have preferred the present appeal seeking enhancement of compensation.

11. The learned counsel for the appellants, submitted that the Tribunal ought not to have fixed 20% contributory negligence in the facts and circumstances of the case; that the Tribunal ought to have seen the report of the Motor Vehicles Inspector Ex.P.13 and the evidence of eye-witness would show that the deceased had not contributed to the accident. The learned counsel further submitted that the accident took place in the year 2021 and the Tribunal had taken a notional income of Rs.12,000/- per month, which is meagre; that the Tribunal ought to have taken Rs.18,000/- per month as notional income; that the deceased was aged 30 years at the time of the occurrence. Further, he stated that the Tribunal had failed to award filial



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consortium to the appellants, who are the parents of the deceased.

Therefore, the learned counsel prayed for enhancement of compensation to the appellants.

12. Though notice has been served on respondents 1 and 2, none has entered an appearance on behalf of them.

13. The learned counsel for the third respondent per contra, submitted that the Tribunal had correctly fixed contributory negligence on the deceased as he had crossed the road in National Highway in a negligent manner. The learned counsel further submitted that the notional income fixed at Rs.12,000/- per month for the deceased is reasonable since the appellants have not produced any proof to show the income earned by the deceased; that the compensation under the heads Loss of Estate and Funeral expenses Rs.25,000/- each is excessive and the Tribunal ought to have awarded Rs.15,000/- each under those two heads; and hence, the learned counsel submitted that the award is just and need not be interfered with and prayed for dismissal of the appeal.

14. Heard learned counsel for the appellants as well as the learned



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counsel for the 3rd respondent and perused the materials available on record.

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15. This Court finds that the Tribunal, on the basis of the report of the Motor Vehicles Inspector Exs.P.13, which revealed that the damage is on the left side of the bike and hence, came to the conclusion that the bike had not fully crossed the road and proceeded in a negligent manner without judging the speed of the opposing car which led to the accident. The finding is based on the rough sketch and the evidence of the P.W.2/pillion rider who has been examined. In the facts and circumstances of this case, this Court is of the view that considering the fact that it was an intersection in a National Highway and crossing the National Highway *per se* cannot be a reason to fix the contributory negligence on the rider of the two wheeler. The driver of the car ought to have been cautious while nearing an intersection or a junction. The evidence of P.W.2/eye-witness would show that the bike was hit from behind. However, the Motor Vehicles Inspector report, Ex.P.13, would show that the bike was damaged on the left side and not on the backside, as rightly found by the Tribunal. Therefore, the contribution of the deceased cannot be ruled out. However, in the facts of this case, this Court is



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of the view that fixing 20% contributory negligence on the deceased would be on the higher side. It would be just and reasonable to fix 10% contributory negligence on the deceased.

16. As regards quantum, it is the claim of the appellants that the deceased was working as a contract labourer. However, no proof has been adduced on the side of the appellants to establish his income. The Tribunal had taken a notional income of Rs.12,000/- per month for the accident, which took place in the year 2021. This Court is of the view that the notional income fixed by the Tribunal is meagre. It would be reasonable to fix the notional income of Rs.15,000/- per month, considering the nature of work done by the deceased at the time of death and the year of the accident. The

deceased was aged 30 years, and hence, 40% has to be added towards future prospects. The deceased was a bachelor at the time of the accident and hence, 50% of his income has to be deducted towards his personal expenses. Hence, the monthly income of the deceased is fixed as $\text{Rs.}21,000/2 = \text{Rs.}10,500/-$, as per the Judgment of Hon'ble Supreme Court in *Sarla Verma Vs. Delhi Transport Corporation* reported in *2009 (6) SCC 121* the multiplier



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applicable is 17. Therefore, the compensation under the head Loss of Dependency is calculated as follows:-

$$\text{Rs.15000} + \text{Rs.6000 (40\% X Rs.15000)} \times 12 \times 17 \times 1/2 = \text{Rs.21,42,000/-}$$

17. The compensation under the heads Loss of Estate and Funeral Expenses at Rs. 25,000/- each is excessive. The said amounts have to be Rs.15,000/- each as per the Judgment of *National Insurance Co. Ltd., Vs. Pranay Sethi and others* reported in *2017 (2) TN MAC 609 (SC)*. However, since the accident took place in the year 2021, the Hon'ble Supreme Court had suggested a revision of 10% every three years. Thus, the amount awarded by the Tribunal under the heads Loss of Estate and Funeral Expenses has to be Rs.16,500/- each. Further, the appellants were not awarded filial consortium @ Rs. 40,000/- each. Hence, the compensation under the head of Filial Consortium is awarded as Rs.80,000/-. Thus, the total compensation awarded by the Tribunal is enhanced from Rs.10,19,200/- to Rs.20,29,500/- (after deducting 10% contributory negligence) break - up follows:-



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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	12,24,000/-	21,42,000/-	Enhanced
2.	Loss of Estate	25,000/-	16,500/-	Reduced
3.	Funeral Expenses	25,000/-	16,500/-	Reduced
4.	Loss of filial consortium	----	80,000/-	Granted
	Total	12,74,000/-	22,55,000/-	
		Less: 20% towards contributory negligence Rs.2,54,800/-	Less: 10% towards contributory negligence Rs.2,25,500/-	
	Total	10,19,200/-	20,29,500/-	Enhanced by Rs.10,10,300/-



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18. With the above modification, this Civil Miscellaneous Appeal is partly allowed, and the compensation awarded by the Tribunal at Rs.10,19,200/- is hereby enhanced to Rs.20,29,500/- 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 respondents are jointly and severally directed to deposit the 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 receipt of a copy of this Judgment. On such deposit, the 1st appellant is permitted to withdraw Rs.12,17,700/- (60% of the award amount), the 2nd appellant is permitted to withdraw Rs.8,11,800/- (40% of the award amount) along with proportionate interest and costs. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

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Index: Yes/No

Neutral Citation: Yes / No



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SUNDER MOHAN, J

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Copy to

1. The Motor Accident Claims Tribunal,
II Additional District Court, Salem.
2. The Section Officer,
VR Section,
High Court,
Madras.

C.M.A. No. 689 of 2023

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