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C.M.A. No.1426 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1426 of 2023

1.Mayavel

2.Tamilarasi

3.Gowsalya

... Appellants/Petitioners

Vs.

1.MS. S R S Travels

No.270, M.M. Adigal Salai,
Puducherry - 605 001.

2.The Manager,

The New India Assurance Co.Ltd.,
T.P. Hub, Divisional Office - 730 900,
Jerome Building, Fort Station Road,
Trichy - 620 002.

...Respondents/Respondents



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award dated 13.07.2022 passed in M.C.O.P. No.237 of 2018 (Filing No. MCOP/310/2018) (CNR No. TNPB01-000331-2018) on the file of the Motor Accident Claims Tribunal (Principal District Judge), Perambalur.

For Appellants : Mr.P.Mani

For Respondents : Mr. R. Srinivasalu for R1
Mr. C. Ramesh Babu for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants questioning the award on liability as well as the quantum of compensation granted by the Tribunal in the award dated 13.07.2022, made in M.C.O.P. No.237 of 2018 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Perambalur.

2.The appellants filed M.C.O.P. No.237 of 2018 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Perambalur claiming a sum of Rs.50,00,000/- as compensation for the death of one Venkatesh who died in an accident that took place on 17.03.2018.



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3. The appellants are the parents and sister of the deceased.

According to the appellants on 17.03.2018, when the deceased was returning in his two wheeler bearing Reg.No.TN 46 V 6990, after visiting his friend Saravanan at about 1.05 A.M at Padalur -Ottathur division road, when he was crossing the Trichy - Chennai, National Highway - NH 45 road from East to West, an Omni Bus belonging to the 1st respondent/S.R.S Travels bearing Reg.No.PY 01 CH 1635 came from South to North, driven by its driver in a rash and negligent manner, dashed against the two wheeler and caused the accident. In the accident, the said Venkatesh sustained grievous injuries on his head and died at the Hospital on the same day. Hence, the appellants filed a claim petition claiming compensation against the respondents.

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

5. The 2nd respondent/Insurance Company filed counter statement and denied all the averments made by the appellants in the claim petition and further stated that the deceased irresponsibly crossed the road at the busy



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Trichy – Chennai National Highways from East to West in which the heavy traffic are plying from North to South and South to North and hence the entire negligence is on the part of the deceased; that the petition was bad for non joinder of necessary parties i.e., owner and insurance company of the two wheeler. The second respondent also denied the age, income and dependency of the deceased and stated that in any event, the total compensation claimed by the appellants are excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellants examined two witnesses as P.W.1 and P.W.2 and marked seven documents as Exs.P.1 to P.7. The second respondent examined Mr.Jayaram as R.W.1 and marked two documents as Exs.R1 & R2.

7. The Tribunal after considering the oral and documentary evidence, held that the deceased had also contributed to the accident, fixed contributory negligence at 50% on the deceased and 50% negligence on the driver of the



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Omni bus belonging to the first respondent and directed the second respondent being the insurer of the Omni bus to pay a sum of Rs.10,91,098/- as compensation to the appellants.

9. Questioning the contributory negligence as well as the quantum of compensation, the appellants have preferred the present appeal.

10. Learned counsel for the appellants, submitted that the Tribunal had erroneously fixed contributory negligence on the part of the deceased as 50% in the absence of any evidence to show that the deceased contributed to the accident. The learned counsel relied upon the Division Bench Judgment of this Court in *Oriental Insurance Company Ltd., Vs. T.R.Subramani and others* reported in **2013 (1) TN MAC 60 (DB)** in support of his submission that there cannot be any presumption of contributory negligence and the same has to be established by cogent and relevant evidence. The learned counsel further submitted that the notional income taken by the Tribunal is meagre and compensation towards Loss of Love and Affection to the third appellant



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(sister) was not awarded by the Tribunal and hence, prayed for allowing the appeal.

11. Learned counsels for the respondents 1 and 2 submitted that the finding of the Tribunal fixing 50% contributory negligence on the deceased cannot be faulted; that admittedly, the accident took place in a National Highway and the deceased ought to have been careful while crossing the road; that the FIR suggests that the deceased crossed the road, however, the evidence of P.W.2 who claimed himself as an eye-witness has stated that the deceased was waiting to cross the road and he did not cross the road. The learned counsel further submitted that in view of the contradictory versions, the case of the appellants cannot be believed; that the earliest version in the FIR that the deceased attempted to cross the National Highway at odd hours has to be taken and the Tribunal had rightly considered the said evidence and fixed the contributory negligence; that the quantum of compensation awarded by the Tribunal cannot be faulted as it is just and reasonable and prayed for dismissal of the appeal.



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12. Heard the learned counsel for the appellants as well as the learned counsels for the first and second respondents.

13. The questions involved in this instant appeal are:-

- (a) Whether the Tribunal was right in fixing 50% contributory negligence on the deceased in the facts and circumstance of the case?
- (b) Whether the Tribunal awarded just and reasonable compensation?

14. On perusal of the records, this Court finds that the accident is said to have taken place in Trichy to Chennai National Highway at 1.05 A.M. It is the case of the appellants in their claim petition that while the deceased was crossing the National Highway, the offending vehicle came from South to North in a rash and negligent manner. The FIR, which is the earliest version of the incident, reveals that the deceased had attempted to cross the National Highway. Therefore, this Court is of the view that the finding of the Tribunal that the deceased also contributed to the accident cannot be faulted though the percentage of contributory negligence fixed on the deceased may not be correct. The road was a National Highway and the deceased ought to



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have exercised due care and caution while crossing the road at odd hours at a place which was not meant for pedestrian crossing. However, this Court is of the view that the offending vehicle which was driven in a rash and negligent manner, ought to have also been careful. It is also seen that the second respondent has not let in any evidence to establish the manner of the accident. From the evidence let in on side of the appellants and other records, this Court is of the view that the 70% contributory negligence has to be fixed on the driver of the offending vehicle/Omni Bus and 30% contributory negligence on the deceased. Accordingly, the 2nd respondent /Insurance Company is liable to pay 70% of compensation to the appellants.

16. As regards the quantum of compensation, this Court is of the view that the compensation awarded under the head “Loss of Dependency” by the Tribunal cannot be faulted. The Tribunal had awarded compensation under the head Loss of Filial Consortium to the first and second appellants @ Rs.40,000/- each. The third appellant being the sister of the deceased is entitled to Rs.40,000/- towards Loss of Love and Affection. Hence, this Court



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awards Rs.40,000/- to the third appellant as compensation towards Loss of Love and Affection.

17. The compensation awarded by the Tribunal under other heads is just and reasonable and hence, the same are confirmed. Thus the compensation awarded by the Tribunal to the appellants is enhanced from Rs.10,91,098/- to Rs.15,55,537/- (after deducting 30% contributory negligence) break - up follows:-

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	20,72,196/-	20,72,196/-	Confirmed
2.	Filial Consortium	80,000/- (40,000/- X 2)	80,000/- (40,000/- X 2)	Confirmed
3.	Loss of Estate	15,000/-	15,000/-	Confirmed
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
5.	Loss of Love and Affection	---	Rs.40,000/-	Granted



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	Total	21,82,196/-	22,22,196/-	
		Less: 50% towards contributory negligence Rs.10,91,098/-	Less: 30% towards contributory negligence Rs.6,66,659/-	
	Net Compensation	10,91,098/-	15,55,537/-	Enhanced by Rs.4,64,439/-

18. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,91,098/- is hereby enhanced to Rs.15,55,537/- 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 second respondent/Insurance Company is 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 appellants are permitted to withdraw their share of the award amount along with proportionate interest and costs, less the amount, if any, already withdrawn, on the basis of apportionment fixed by the Tribunal.



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The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

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dk/spp

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

Copy to

1. The Principal District Judge
Motor Accident Claims Tribunal
Perambalur.
2. The Section Officer
VR Section
High Court of Madras
Chennai.



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SUNDER MOHAN, J

dk/spp

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