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C.M.A.No.1419 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

**THE HONOURABLE MR. JUSTICE K.RAJASEKAR**

C.M.A.No.1419 of 2021

1. Govindhasami
2. Maruthambal
3. Kasthuri (Minor)

[Minor claimant represented by her mother,  
the second appellant herein]

... Appellants /Claimants

Vs.

1. Dhananchezhian  
[R1 remained ex-parte before Tribunal.  
Hence, notice to R1 dispensed with]

2. M/s. Reliance General Insurance Company Ltd R.O.,  
Rep by its Branch Manager,  
No.19, Reliance Centre,  
Walchand Hirachand Marg,  
Ballard Estate, Mumbai – 400 001  
Maharashtra State  
Respondents/Respondents

...

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1989, against the Award and Decree dated 23.12.2020 made in M.C.O.P.No.585 of 2017 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

For Appellants : M/s. K. Priyavarshini  
For R1 : Ex-Parte



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For R2 : M/s. C. Bhuvanasundari  
**JUDGMENT**

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This Civil Miscellaneous Appeal has been filed by the claimants for enhancement of compensation against the award passed in MC.O.P. No.585 of 2017, dated 23.12.2020 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur, wherein, the Tribunal has awarded compensation of Rs.12,39,600/- along with interest.

2. For the sake of convenience the parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimants is that the deceased in this case, namely Karthick, who is the son of the claimants No.1 and 2, was riding his Yamaha Crux Motorcycle bearing Registration No.TN 46 K 8487 along with two of his friends, namely Manikandan and Venkatesan, on 09.06.2017 at about 2.30 p.m., on Chennai to Trichy National Highways (NH-45), near Thuraimangalam Lake, Perambalur, at that time, a Car bearing Registration No.TN 25 BB 8530 which was driven by its driver in rash and negligent manner came behind and dashed against the motorcycle and caused severe injuries to the deceased as well as to the pillion riders and subsequently, the



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deceased was succumbed to injuries at the Government Hospital, Perambalur. In this regard, a criminal case was also registered against the driver of the car in Crime No.664 of 2017 under Sections 279, 337 and 304A IPC, on the file of Perambalur Police station. They filed claim petition under Sections 140 and 166 of the Motor Vehicles Act seeking compensation for a sum of Rs.40,00,000/-.

4. The first respondent is the owner of the car has not contested the claim and was remained ex-parte.

5. The second respondent is the insurer of the car has contested the claim, filed counter and contended that the deceased and pillion riders were travelled in the motorcycle in negligent manner in the National Highways (NH-45), after consuming alcohol and without wearing helmet and due to the negligent act, the accident had happened, Hence, the second respondent is not liable to pay any compensation to the claimants and prays to dismiss the claim petition.

6. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P1 to P12 were marked. On the side of the



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second respondent, the official of the Insurance Company was examined as R.W.1 and Ex.R1 was marked.

7. The Tribunal after considering the objections raised by the Insurance Company, based on the evidences placed on record in Point No.1 has held that the driver of the car belongs to the first respondent is responsible for the accident and in Point No.3, the Tribunal has quantified the compensation and awarded a sum of Rs.12,39,600/- to the claimants.

8. Aggrieved over the quantum of compensation awarded, the claimants have approached this Court seeking enhancement of compensation.

9. The learned counsel for the appellants/claimants submitted that the deceased was aged about 22 years at the time of accident and he was an Engineering Graduate and the Tribunal has not properly appreciated this fact while fixing the notional income and the Tribunal has also awarded compensation under other heads is also on the lower side hence prays to enhance the compensation.



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10. The learned counsel for the Insurance Company has submitted that admittedly three persons have travelled in the motorcycle without wearing helmet by violating the statutory provisions of law and that the Tribunal has not reduced any compensation for the contributory negligence on the part of the deceased and opposed the enhancement of compensation.

11. I have considered the rival submissions on both sides and also perused the records.

12. Evidence of P.W.1 and P.W.2, shows that three persons had travelled in the two-wheeler. One of the pillion rider namely, Venkatesan was also examined as P.W.2 and he has categorically admitted that they were not wearing helmet. However, he has stated that they have travelled in the motorcycle on the left hand side of the road on Thuraimangalam Earikarai with due care and caution. The driver of the car drove the same without applying horn with high speed and hit on the backside of the motorcycle, which resulted in causing injuries to them. In cross examination, they have



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also denied that they have negligently drove the motorcycle.

13. The Tribunal held that there is no evidence placed on record to show, the rider of the motorcycle was not able to ride with due care and caution, which resulted in accident. The Tribunal has given a categorical finding that the deceased and his friends have travelled in the motorcycle with due care and caution however the driver of the car has drove the same in negligent manner and hit on the two-wheeler.

14. The Judgment of the Hon'ble Apex Court in ***Mohammed Siddique and Others vs. National Insurance Company Limited and Others [2020 (3) SCC 57]*** has held that reduction of 10% towards contributory negligence without proving the fact that very act of 3 persons travelling in two-wheeler contributed either to the accident or to the impact of the accident upon the victim. The relevant paragraphs reads as follows:

*“12. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motorcycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most, it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988,*



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*imposes a restriction on the driver of a two-wheeled motorcycle, not to carry more than one person on the motorcycle. Section 194-C, inserted by Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motorcycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motorcycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimised, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motorcycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motorcycle. The fact that the motorcycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motorcycle from*



*behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motorcycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW 3 to the effect that 2 persons on the pillion added to the imbalance.*

*13. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence, the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside.”*

15. As held above, three persons have travelled in the motorcycle is not sufficient ground to hold that there is a contributory negligence on the part of the persons who travelled in the motorcycle unless there is evidence to show that the rider of the motorcycle was not able to ride the vehicle due to overload or he had driven the vehicle in negligent manner. In this case, no such evidence placed on record, hence, this Court is not inclined to reconsider the negligent aspect, held by the Tribunal.

16. With regard to the quantum of compensation, the Claimants have marked Ex.P6, the Graduation Certificate, which shows that the



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deceased is a Bachelor of Engineering in Mechanical and the Certificate was obtained from Anna University. The Division Bench of this Court in ***The Managing Director, Tamil Nadu State Transport Corporation Ltd., vs. K. Jayalaxmi and J. Karunakaran and Another vs. The Managing Director, Tamil Nadu State Transport Corporation Ltd., in [C.M.A.Nos.2114 & 1134 of 2022]*** and in ***Maanvizhi and 3 others vs. Suresh Babu and Another in [C.M.A.No.1639 of 2021]*** has fixed a sum of Rs.20,000/- per month as the notional income for III year Engineering Student. By following the Division Bench Judgment of this Court cited supra, considering the date of accident, educational qualification and other relevant facts placed on record, this Court is of the view that fixing the notional income of Rs.20,000/- would be proper.

17. As per the decision of the Hon'ble Supreme Court in the case of ***Sarla Verma and Others vs. Delhi Transport Corporation and Another [2009 (2) TNMAC 1 SC : 2009 (6) SCC 121]***, the claimants are entitled to 40% of the income towards future prospects. Considering the age of the deceased is about 22 years and the applicable multiplier is '18' and after deducting 1/2 for the personal expenses of the deceased, the loss of



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income is arrived as follows:  $[20000 + 8000 (40\% \text{ of } 20000) \times 12 \times 18 \times \frac{1}{2}] = \text{Rs.}30,24,000/-$ .

18. As per recent Judgment of the Apex Court in *Magma General Insurance Co. Ltd., vs. Nanu Ram and Others [2018 (18) SCC 130]* the claimants are entitled to get compensation under the head loss of consortium. Accordingly, each claimant is entitled for Rs.40,000/-. The Tribunal has also awarded Rs.15,000/- each under the head of loss of dependency and loss of estate and this Court is of the view the same is reasonable and the same is hereby confirmed.

19. Thus, the compensation awarded 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 granted or reduced |
|-------|-------------------------------------------|---------------------------------|-----------------------------------|---------------------------------------------------|
| 1.    | Loss of dependency                        | Rs.12,09,600/-                  | Rs.30,24,000/-                    | Enhanced                                          |
| 2.    | Funeral Expenses                          | Rs.15,000/-                     | Rs.15,000/-                       | Confirmed                                         |
| 3.    | For Loss of Estate                        | Rs.15,000/-                     | Rs.15,000/-                       | Confirmed                                         |
| 4.    | For Loss of Consortium (Rs.40,000/- each) | ---                             | Rs.1,20,000/-                     | Granted                                           |
|       | <b>Total</b>                              | <b>Rs.12,39,600/-</b>           | <b>Rs.31,74,000/-</b>             | <b>Enhanced by Rs.19,34,400/-</b>                 |



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20. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.12,39,600/- is hereby enhanced to Rs.31,74,000/- [Rupees Thirty One Lakhs and Seventy Four Thousand only] together with interest at the rate of 7.5% per annum from the date of filing of Claim 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 weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.585 of 2017, on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur. On such deposit, the claimants are permitted to withdraw the award amount, now determined by this Court along with proportionate interest and costs, less the amount, if any, already withdrawn. The share of the minor claimant is directed to be deposited in any one of the Nationalized Bank till the minor claimant attains majority. On such deposit, the second claimant, who is the mother of the minor claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimant. Since this Court has enhanced the compensation, the



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appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The Tribunal shall disburse the amount by directly giving credit to the Savings Bank Account of the claimants. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

31.10.2023

ssi

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1.The Principal District Judge,  
Motor Accidents Claims Tribunal,  
Perambalur.

2.The Section Officer,  
VR Section,  
High Court,  
Madras.



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K. RAJASEKAR,J.

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