



C.M.A No.184 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A. No.184 of 2023

1.Prabavathi
2.R.Mohana Priya
3.R.Akash
minor represented by his mother and next friend
Mrs.Prabavathi
4.Lakshmi
5.M.Ponnusamy ... Appellants

Vs.

1.R.Malliga
2.National Insurance Co., Ltd.,
(Motor Third Party Cell)
Murugesu Naicker Complex
1st Floor
No.66, Greaves Road, Chennai - 600 006 ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 22.12.2021 in M.A.C.T.O.P. No.1192 of 2019 on the file of Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.



C.M.A No.184 of 2023

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For Appellant : Mrs.M.Malar

For Respondents : Mr.S.Prabhu for R1
Mr.C.Paranthaman for R2

JUDGMENT

In a road accident that took place on 04.02.2019, at 18.00 hours, certain Ravi died, when a lorry bearing Registration No.TN-25 W-9396 dashed against him. The accident took place in Sholinghur - Arakkonam Road in Vellore District. In the Accident Register, it is indicated that the victim of the accident was inebriated at the time of the accident and that the accident itself had taken place on the wrong side of the road (for the motorcycle) and occurred on the line of motion of the alleged offending vehicle.

2. Seeking compensation, the widow and two children of the victim along with the parents of the victim preferred M.C.O.P. No.1192 of 2019 on the file of Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai. The Tribunal dismissed the claim of the



C.M.A No.184 of 2023

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applicants on the ground that the victim was 100% liable for the accident.

3. The learned counsel for the appellant submitted that in the worst case scenario, the Tribunal should have only apportioned the liability but, to hold that the appellant was entirely negligent when admittedly the lorry ran over him and when the FIR too was registered on the driver of the vehicle, is not appropriate. The learned counsel added that the respondents have not examined the lorry driver.

4. Per contra, the learned counsel for the respondents submitted that the victim was found to be inebriated and it finds reference in Ext.R2. The learned counsel compounding the fact to victim added that neither he possessed a valid and effective driving licence nor did he wear a helmet. He added further that as per Ext.R4 - rough sketch, the accident had taken place right at the middle of the road. It was almost a suicide, which the victim had committed under the circumstances. He added that the victim was inebriated and the same is not adequately proved, since Ext.P2 - Postmortem report did not indicate the presence of any alcohol in the stomach of the victim. It only leaves the other two. However, there



C.M.A No.184 of 2023

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is no dispute that the victim did not possess a valid and effective driving licence nor was he wearing a helmet.

5. It is not in dispute that the accident had taken place right at the middle of the road and it is a head on collision. The issue is, who has the best opportunity to avoid an accident which is essential to decide whose fault it could be. Here since the postmortem report did not indicate the presence of alcohol, necessarily, this court has to go by the postmortem report than the unverified Accident Register copy. This court considers that Ext.R2-Accident Register cannot be concluded as conclusive proof of the fact. Taking into consideration all the facts and circumstances of the case, this court considers that it would be appropriate to apportion the liability at 60% : 40%, 60% against the victim and 40% against the offending vehicle.

6. Turning to the compensation to be paid, the victim stated to be a tailor, this court reckons the monthly income of the victim notionally at Rs.12,000/- per month. At Rs.12,000/- per month, with an addition of 25% towards future prospects and applying 14 as the multiplier and



C.M.A No.184 of 2023

WEB COPY

reducing the same by 1/4th (which amount represents that is required for the personal upkeep of the victim) and reducing the same arrived further by 60%, the total value of loss of dependency is determined at Rs.7,56,000/-. The other pecuniary and non-pecuniary heads of compensation is tabulated below:

<i>Sl. No.</i>	<i>Heads of compensation</i>	<i>Amount</i>
1.	Loss of dependency (12,000 + 25% x 12 x 14 - 25/100) x (40/100)	Rs.7,56,000/-
2.	Transportation	Rs. 10,000/-
3.	Loss of estate	Rs. 15,000/-
4.	Loss of love and affection	Rs.2,20,000/-
5.	Funeral expenses	Rs. 15,000/-
	Total	Rs.10,16,000/-

7. In conclusion, this court allows the appeal and determines the compensation payable at Rs.10,16,000/- and requires the second respondent/insurance company to pay the same with interest at the rate of 7.5% per annum from the date of claim petition before the court less interest for 461 days (delay in filing the appeal), within a period of six weeks from the date of receipt of a copy of this judgment. The said sum



C.M.A No.184 of 2023

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shall be apportioned in the manner that the first claimant is entitled to a sum of Rs.2,50,000/-, the second claimant is entitled to a sum of Rs.3,00,000/-, the third minor claimant is entitled to a sum of Rs.3,16,000/- and the fourth and fifth claimants are entitled to a sum of Rs.75,000/- each. The appellants/claimants are now required to pay additional court fee on the enhanced value of compensation. No costs.

29.11.2023

Asr

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Motor Accident Claims Tribunal
(Chief Judge, Court of Small Causes), Chennai.



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C.M.A No.184 of 2023

N.SESHASAYEE, J.

Asr

C.M.A. No.184 of 2023

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