



CMA No. 1376 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1376 of 2023

1. Rathika

2. Minor Ram Balaji

(Minor represented by his guardian / mother
Radhika 1st appellant)

3. Murugesan @ Murugan

4. Vanitha

5. Sumathi

6. Minor Manikandan

(rep.by his guardian / father Murugesan
@ Murugan)

... Appellants

Versus

1. S.Shanthi

2. National Insurance Company Limited,
Rep. by its Manager,
222/3, Rasi Agencies,
Opp. Axis Bank, Anna Salai,
Thavittupalayam, Anthiyur,
Erode District.

3. M.Sundar @ Sundarajaperumal

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.



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No. 530 of 2016 dated 22.04.2021 on the file of the Motor Accident Claims Tribunal Cum IV Additional District and Sessions Judge, Bhavani and praying to set aside the same by enhancing the compensation amount.

For Appellants : Mr. C.Kulanthaivel.

For Respondents : Mr. S.Vadivel for R2.

Mr. B.Mohan for R1.

No appearance for R3.

J U D G M E N T

The appeal has been filed challenging the award passed by the Tribunal in M.C.O.P. No. 530 of 2016 dated 22.04.2021.

2.The appellant had filed claim petition seeking compensation before the Tribunal stating that on 28.04.2016, while the deceased was riding his motorcycle bearing Registration No. TN 28 R 4683 along with a pillion rider on Andiyur to Vattakadu Road towards North to South nearing Nehru Nagar, a car bearing Registration No. TN 07 AY 8409 came from the opposite direction in a rash and negligent manner and hit against the motorcycle of the deceased, as a result of which the deceased



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sustained multiple injuries all over the body and died.

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3.The first respondent filed a counter stating that she had sold the car to the third respondent on 29.03.2015; that she is not the owner of the car at the time of accident and is no way connected with the claim petition and hence, the claim petition may be dismissed against her.

4.The second respondent filed counter denying all the averments made in the claim petition stating that the accident occurred due to the rash and negligent driving of the deceased; that the deceased does not possess valid driving license as well as insurance policy and he did not wear helmet at the time of the accident; and that in any case, the compensation claimed by the appellants is excessive and prayed for dismissal of the petition.

5.The third respondent remained ex parte before the Tribunal.

6.The appellants examined four witnesses on their side as PW.1 to PW.4 and marked Ex.P.1 to Ex.P.10. On the side of the first and second respondents, three witnesses were examined as RW.1 to RW.3 and



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Ex.R.1 to Ex.R11 were marked.

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7.The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the rash and negligent driving of the driver of the car as well as the driving of the deceased and fixed 65% contributory negligence on the driver of the car and 35% contributory negligence on the deceased and directed the second respondent to pay a sum of Rs. 12,59,747/- as compensation to the appellants at the first instance and recover it from the first respondent. Aggrieved by the said award, the appellant had preferred the instant appeal.

8.The learned counsel for the appellants submitted that though the appellants had established that the deceased was working as a painter, the Tribunal fixed a meagre notional income at Rs. 8,000/- per month. The learned counsel submitted that PW.3 who is the priest of the temple where the deceased was working as a painter deposed that the deceased was earning Rs. 600/- per day. Hence, the notional income fixed by the



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Tribunal has to be enhanced. Further, the learned counsel submitted that the evidence on record discloses that the deceased had not contributed in any manner for the accident and therefore, fixing of 35% contributory negligence on the deceased merely because he is not having valid license and not wearing helmet is erroneous. Therefore, the learned counsel prayed for enhancement of the compensation.

9.The learned counsel for the first respondent submitted that the first respondent was not the owner of the car at the time of the accident and the direction to pay and recover the compensation from her is erroneous and prayed for dismissing the appeal against her.

10.The learned counsel for the second respondent submitted that the award of the Tribunal is just and reasonable and no interference is called for. Further the Tribunal has granted parental consortium and filial consortium to the first to third appellants to the tune of Rs. 1,60,000/-. However, each of them are entitled to only Rs. 40,000/-. The learned counsel further submitted that the finding of the Tribunal is clear that the appellants have not produced the driving license of the deceased and the nature of the injuries indicates that the deceased did not



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wear helmet. Therefore, the learned counsel submitted that there is no merit in the appeal and prayed for dismissal.

11.Though notice has been served on the third respondent, none has entered appearance on behalf of him.

12.The questions that arise for consideration in the instant appeal are;

- (i) Whether the Tribunal was right in fixing 35% of contributory negligence on the deceased?
- (ii) Whether the Tribunal was right in directing the second respondent to pay the compensation at the first instance and recover it from the first respondent?
- (iii) Whether the compensation awarded by the Tribunal is just and reasonable?

13.As regards the first question, it is seen that the Tribunal had recorded the fact that the appellants had failed to produce the MVI Report which would clarify as to whether the deceased had valid license. The appellants also could not produce the driving license of the deceased. Hence, the Tribunal was right in holding that the deceased did



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not have valid license and did not wear helmet at the time of the accident.

However, 35% contributory negligence fixed for the aforesaid violations is unwarranted. It is seen from Ex.P.2 Post-mortem Certificate that the deceased had not suffered any head injuries. Therefore, it is just and reasonable to fix 10% contributory negligence on the deceased for riding the two wheeler without valid driving license.

14.It is also seen that the Tribunal found that though the First Respondent has claimed before the Tribunal that she had sold the car to the third parties, the finding of the Tribunal that the first respondent is the owner of the car based on evidence cannot be faulted. Hence, the direction of the Tribunal to the second respondent to pay the compensation to the appellants at the first instance and recover it from the first respondent is confirmed.

15.As regards quantum of compensation, the accident is of the year 2016. The appellants have established the avocation of the deceased through the evidence of PW.1 and PW.3. PW.3 would state that the daily income of the deceased was Rs.600/-. Considering the above facts and the fact that the accident is of the year 2016, this Court is of the view that



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it would be just and reasonable to fix the notional income at Rs. 14,000/- per month. Since the deceased was aged 23 years at the time of the accident, the appellants are entitled to 40% enhancement towards future prospects and the multiplier applicable is 18. Therefore, the loss of income of the deceased would be Rs. 14,000/- + Rs. 5,600/- (40% of Rs. 14,000/-) = Rs. 19,600/- x 12 x 18 x 2/3 (1/3th deducted towards personal expenses since the appellants 1 to 3 are his dependants) = Rs. 28,22,400/-. The amount of Rs. 1,60,000/- awarded under the head loss of parental consortium and filial consortium is excessive and the same is reduced to Rs. 1,20,000/-. The award under the other heads is just and the same is confirmed. Thus, the award of the Tribunal is modified as follows;

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	16,12,872	28,22,400	Enhanced
2.	Loss of love and affection	1,20,000	1,20,000	Confirmed
3.	Loss of Consortium	1,60,000	1,20,000	Reduced
4.	Medical expenses	7,700	7,700	Confirmed
5.	Loss of estate and funeral expenses	30,000	30,000	Confirmed
6.	Transportation	7,500	7,500	Confirmed



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Total	19,38,072	31,07,600	
(Contributory negligence)	6,78,325 (35%)	3,10,760 (10%)	Reduced
Net compensation payable to the appellants	12,59,747	27,96,840	Enhanced by Rs.15,37,093/-

16. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,59,747/- is hereby enhanced to Rs.27,96,840/- 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 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 a receipt of copy of this Judgment at the first instance and recover it from the first respondent. On such deposit, the appellants 4 to 6 are permitted to withdraw Rs. 50,000/- each, the third appellant is permitted to withdraw Rs. 2,00,000/- and the first appellant is permitted to withdraw Rs. 12,23,420/- along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor second appellant of Rs. 12,23,420/- is directed to be deposited in a interest bearing fixed deposit in any of the nationalized banks till he attains majority and the first appellant is



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permitted to withdraw the accrued interest once in six months. Since the sixth appellant has become major after the filing of the claim petition, he is permitted to withdraw his share by filing proper application before the Tribunal. The appellants are directed to pay the necessary court fee if any on the enhanced award amount. No costs.

30.08.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To
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1. Motor Accident Claims Tribunal Cum
IV Additional District and Sessions Judge,
Bhavani.

2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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