IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1501 of 2022
and C.M.P. No.11102 of 2022

The Divisional Manager,
United India Insurance Co. Ltd,
Divisional Office,
No. 2, Bhuvaneshwari Complex, Dr. Sankarn Road,
Namakkal Town and District. .. Appellant

Vs.

1.P.Chandrakumar
2.S.Latha
3.E.Thiruselvi
4.Sri.Suba Indane Gas Agency
No.233/55, Andapuram Road,
Kattuputhur, Thottaiyam (tk)
Trichy District – 621 207. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 23-11-2021 made in MCOP.No.95 of 2020 on the file of the Motor Accidents Claims Tribunal (Sessions Judge, Special Court of cases under SC/ST (POA) Act, Namakkal.

For Appellant : Mr.D.Bhaskaran

For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the negligence as well as quantum of compensation granted by the Tribunal in the award dated 23.11.2021 made in M.C.O.P.No.95 of 2020 on the file of the Motor Accident Claims Tribunal, Sessions Judge, Special Court of cases under SC/ST (POA) Act, Namakkal.

2. The respondents/claimants filed the above claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Palaniyappan, who died in the accident that took place on 28.12.2019.

3. According to the respondents, on the date of accident, when the deceased Palaniayappan was riding in a TVS XL Super bearing Regn.No.TN48 E 7915 onm Kattuputhur – Nagiyanallur Main Road, near Indane Gas Godown, on the left side of the road towards west to east direction, one Tata Ace bearing Regn.No.TN47 AZ 1107 which was coming in the opposite direction, driven by its driver in a rash and negligent manner,

dashed against the said Palaniyappan and caused the accident. Due to the accident, the deceased Palaniyappan sustained severe head injury and died on the spot. Hence, the respondents filed claim petition claiming compensation against the appellant, as insurer of the offending vehicle and the 4th respondent as owner of the offending vehicle.

4. The fourth respondent remained exparte before the Tribunal.

5. The appellant/Insurance company filed counter and denied all the averments made by the appellants in the claim petition. It is stated that the accident occurred only due to the negligent act of the deceased Palaniyappan who rode the motorcycle in a rash and negligent manner, without seeing the vehicle which is coming out of the gas godown, hit upon it, fell down and sustained grievous injuries. Contributory negligence has to be fixed on the deceased while determining compensation. The respondents have not impleaded the owner and insurer of the two wheeler and hence the petition is bad for non-joinder of necessary parties. The appellants denied the age, occupation and income of the deceased. In any event, the total compensation claimed by the respondents are excessive and prayed for dismissal of the

claim petition.

6. Before the Tribunal, the 1st respondent examined himself as PW1 and one Paramasivam, eye-witness to the accident was examined as PW2. Eleven documents were marked as Exs.P1 to P11. On the side of the appellant, RW1 & RW2 were examined and Exs.R1 to R3 were marked.

7. The Tribunal, considering the oral and documentary evidence held that the accident occurred due to rash and negligent driving by both the driver of the vehicle belonging to the fourth respondent as well as the deceased Palaniyappan, fixed the negligence in the ratio 85:15 and directed the appellant, being the insurer of the offending vehicle to pay a sum of Rs.8,08,860/- as compensation to the respondents at the first instance and recover the same from the 4th respondent, owner of the offending vehicle

8. Aggrieved by the said order, the appellant has preferred the present appeal .

9. The learned counsel appearing for the appellant submitted that the Tribunal ought to have seen that the deceased also contributed to the accident since it was a head on collision. The deposition of PW1 and the documentary evidence on the side of the respondents would show that the deceased contributed to the accident and hence contributory negligence ought to have been fixed on the deceased. However, the Tribunal had fixed only 15% contributory negligence on the deceased for not wearing helmet and for not possessing valid driving licence at the time of accident. Admittedly, the deceased was survived by a son, two daughters who are all married and were not dependent on the deceased. The evidence of PW1, the son of the deceased confirms the said fact.

10. The learned counsel relied on the judgment of the Hon'ble Supreme Court in ***2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another] and 2018 (1) TNMAC 365 [New India Assurance Co. Ltd. v. Vinish Jain and others],*** in support of his submission that only if the claimants are dependents, the personal expenses has to be one third of lesser. Otherwise 50% has to be deducted towards his

personal expenses. The learned counsel further submitted that in any event, the compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

11. Though notice has been served on the respondents and their names are printed in the cause list, none appeared on behalf of the respondents.

12. Heard the learned counsel appearing for the appellant and perused the materials available on record.

13. The questions involved in the present appeal are -

(a) whether the Tribunal ought to have fixed contributory negligence on the deceased ;

(b) whether the quantum of compensation awarded by the Tribunal is just and reasonable.

14. As regards the question of negligence is concerned, it is seen that the respondents have examined PW2-eye witness to the accident who had stated that the accident took place only due to the rash and negligent driving

of the offending vehicle insured with the appellant. PW1 was cross examined by the appellant however nothing has been elicited to disbelieve his testimony. Further, the appellant has not let in any evidence to contradict the evidence of PW2. The driver of the offending vehicle was also not examined. Therefore, there is no evidence to fix contributory negligence on the part of the deceased. It is well settled that in order to fix contributory negligence, there must be clear and cogent evidence which is absent in this case. However, it is seen that admittedly the deceased did not possess valid driving licence and the nature of injuries confirms the fact that he did not wear helmet at the time of accident. Therefore, the Tribunal rightly fixed 15% contributory negligence on the part of the deceased for the aforesaid violations. The said finding cannot be faulted.

15. As regards quantum of compensation, the Tribunal has fixed the notional income of the deceased as Rs.10,500/- per month. Considering the avocation of the deceased, his age at the time of accident and the year of accident, this Court is of the view that the notional income fixed by the Tribunal at Rs.10,500/- is just and reasonable. The Tribunal also held that

the deceased was aged 60 years at the time of accident based on Ex.P2-postmortem certificate, in the absence of any other evidence to prove the age. PW1 who is the son of the deceased had admitted in his evidence that dependents including himself were children of the deceased, married and living separately. The Hon'ble Supreme Court in the judgment in **Sarla Verma's case,** *cited supra* had held that deductions for personal expenses would depend upon the number of dependents and not the number of claimants. Further in ***Vinish Jain's case,*** the Hon'ble Supreme Court in similar circumstances held that where the deceased was survived by sons who had independent source of income, the deduction has to be 50% towards personal expenses. The relevant paragraph is as follows -

> *7. This case relates to death of one A.P. Jain. He wa 78 years of age. At the time of death, his Annual incmoe was assessed at Rs.3,64,500/-. The deduction made for Personal Expenses at 1/3 is very low keeping in view the fact that the claimants are his two major sons and two grand-daughters. The major sons have their own source of income and were not dependent on the deceased and the two grand-daughters are primarily dependent on their father and not on their grandfather. We are also of the view that the High Court has erred in granting Rs.50,000/- as Loss of Love and Affection to each of the claimants. The total compensation granted is Rs.14,39,980 alongwith interest at the rate of 7.5% per annum.*
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> *8. We feel that 50% deduction is called fr and if this factor is taken into consideration, then the loss of dependency is Rs.1,82,250/- and if multiplier of 5 is used, the compensation works out to*

*Rs.9,11,250/-. In addition, the claimants would be entitled to Rs.70,000/- for loss of love & Affection and funeral expenses, etc as per the judgment of this Court passed in the case of **Pranay Sethi** (supra). Accordingly, the amount of compensation is reduced to Rs.9,81,250/- alongwith interest awarded by the Tribunal.*

16. In view of the above and in the light of PW1's evidence that the respondents 1 to 3 are all married and living separately, this Court is of the view that it would be appropriate to deduct 50% towards personal expenses of the deceased. As per Ex.P2-postmortem certificate, the deceased was aged 60 yrs. at the time of accident. Hence, 10% has to be added towards future prospects and multiplier applicable is 9. Thus, the compensation awarded under the head loss of dependency is modified as follows -

10,500 x 12 x 9 x 50% = Rs.5,67,000/-

The respondents are entitled to 10% of income towards future prospects. Accordingly a sum of Rs.56,700/- (567000 x 10%) is awarded towards future prospects.

17. The Tribunal has awarded a sum of Rs.90,000/- towards loss of love and affection which is meagre. The respondents 1 to 3 who are the

children of the deceased are entitled to a sum of Rs.40,000/- each towards loss of love & affection and hence the amount awarded under the said head is enhanced to Rs.1,20,000/-. The compensation awarded under other heads are just and reasonable and hence the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as 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	7,56,000/-	5,67,000/-	Reduced
2.	Future prospects	75,600/-	56,700/-	Reduced
3.	Loss of love & affection	90,000/-	1,20,000/-	Enhanced
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	**9,51,600/-**	**7,73,700/-**	
	Less : 15% Contributory negligence on the deceased	**1,42,740/-**	**1,16,055/-**	
	Net compensation payable	**8,08,860/-**	**6,57,645/-**	**1,51,215/-**

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,08,860/- is hereby reduced to Rs.6,57,645/- 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 appellant / Insurance company is directed to deposit the award amount, i.e. Rs.6,57,645/-, 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 the same from the 4th respondent. On such deposit, the respondents 1 to 3 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. The appellant/insurance company is permitted to withdraw the excess amount lying in the deposit, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

03.08.2023

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Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

SUNDER MOHAN, J.

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To

1.The Special Court of cases under SC/ST (POA) Act,
Motor Accidents Claims Tribunal,
Namakkal.

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

C.M.A.No.1501 of 2022

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