



C.M.A.No.1379 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1379 of 2020

1.Meena

2.Minor.Jai Pratheesh

Rep. by his next friend and guardian and
Mother Meena (1st appellant)

3.Deivanai

Jaganathan (Died)

... Appellants

Vs.

1.Kannan

2.United India Insurance Co. Ltd.,
Divisional Office – II,
104/A, Peramanur Main Road,
Salem – 636 007.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award passed in M.C.O.P.No.1441 of 2017 (on the file of the Special District Judge, MCOP Tribunal, Salem) dated 27.08.2019.

For Appellants : M/s.J.Prithivi

For Respondents : R1 – Died (Steps Due)
Mr.D.Bhaskaran for R2



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J U D G M E N T

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This appeal has been filed by the appellants/ claimants challenging the award passed in M.C.O.P.No.1441 of 2017 dated 27.08.2019 on the file of the Special District Judge, MCOP Tribunal, Salem.

2.The brief facts of the case is that on 02.07.2017 at about 10.30 p.m., the deceased Prakash was riding his motorcycle bearing Registration No.TN-30-BF-7708 along with his wife near Annamalai Medical Store on the Saminathapuram Road. At that time, the motorcycle owned by the first respondent bearing Registration No.TN-30-AS-5890 came from Saminathapuram in a rash and negligent manner and hit against the motorcycle driven by the deceased, due to which, the deceased lost his life.

3.Thereafter, the wife, son and parents of the deceased Prakash/ appellants / claimants filed claim petition before the Motor Accidents Claims Tribunal, claiming a sum of Rs.25 Lakhs as compensation. During the pendency of the claim petition, the father of the deceased namely, Jaganathan/ fourth claimant died. After adjudication, the Tribunal awarded a sum of Rs.11,96,235/- as



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compensation along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation with proportionate costs. Aggrieved by the same, the claimants have preferred this appeal.

4.The learned counsel appearing for the appellants submitted that the appellants have filed this appeal questioning the 50% contributory negligence fixed on the deceased. The learned counsel further submitted that immediately after the accident, the deceased Prakash was taken to Nalam Hospital, Salem for first aid and the Doctor in the medical records mentioned that Prakash was under the influence of alcohol and based on the medical records and the evidence of R.W.1 and R.W.3, the Tribunal fixed 50% contributory negligence on the part of the deceased, without conducting the procedure contemplated under Section 85 of the Motor Vehicles Act. Mere Doctor certificate is not sufficient to hold that the deceased was under the influence of alcohol. Hence, this Court may fix the entire negligence on the part of the rider of the motorcycle owned by the first respondent and fasten entire liability on the Insurance Company.

5.Per contra, the learned counsel appearing for the second



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respondent Insurance Company submitted that immediately after the accident, the deceased was admitted in Nalam Hospital, Salem. The owner of the vehicle was examined as R.W.1 and the rider of the vehicle was examined as R.W.3 and they deposed that the deceased was under the influence of alcohol and he all of a sudden emerged from the Annamalai Cross Street and dashed against the vehicle owned by the first respondent. Hence, the impugned award warrants no interference.

6.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent and perused the materials available on record.

7.It is alleged that 02.07.2017 at about 10.30 p.m., the deceased Prakash was riding his motorcycle along with his wife near Annamalai Medical Store on the Saminathapuram Road. At that time, the motorcycle owned by the first respondent came from Saminathapuram in a rash and negligent manner and hit against the motorcycle driven by the deceased, due to which, the deceased lost his life.



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8.The accident and the manner in which the accident happened are not disputed. The only dispute is with regard to the 50% contributory negligence fixed on the part of the deceased by the Tribunal.

9.Perusal of records disclose that immediately after the accident, the deceased Prakash was taken to Nalam Hospital, Salem for first aid and the Doctor in the medical records mentioned that Prakash was under the influence of alcohol and based on the medical records and the evidence of R.W.1 and R.W.3, the Tribunal fixed 50% contributory negligence on the part of the deceased, however, the said Doctor was not examined before the Tribunal. As rightly contended by the learned counsel appearing for the appellants, mere clinical examination is not sufficient to hold that the deceased was under the influence of alcohol. There is a procedure contemplated under Section 85 of the Motor Vehicles Act and the said procedure was not followed in the present case. Hence, 50% contributory negligence fixed on the part of the deceased by the Tribunal is not sustainable one and this Court reduce the same to 20%.

10.The Tribunal rightly fixed the monthly income of the



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deceased as Rs.12,000/- and rightly deducted 1/3 towards his personal expenditure and rightly adopted the multiplier 18 and arrived at a sum of Rs.17,28,000/- for loss of dependency and deducted 50% of the amount for contributory negligence and awarded a sum of Rs.8,64,000/-. This Court modify the same and deduct 20% of the amount for contributory negligence. Hence, the amount for loss of dependency comes to Rs.13,82,400/- [80% of Rs.17,28,000/-] . The amount awarded by the Tribunal under the other heads in the opinion of this Court is just and reasonable and the same are confirmed.

11.Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of dependency	Rs. 8,64,000/-	Rs.13,82,400/-
2.	Loss of consortium	Rs. 40,000/-	Rs. 40,000/-
3.	Medical Bill	Rs. 2,62,235/-	Rs. 2,62,235/-
4.	Funeral expenses	Rs. 15,000/-	Rs. 15,000/-
5.	Loss of estate	Rs. 15,000/-	Rs. 15,000/-
	Total	Rs.11,96,235/-	Rs.17,14,635/-

12.The claimants are entitled to total compensation of Rs.17,14,635/- along with interest at the rate of 7.5% p.a. from the



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date of petition till the date of realisation.

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13.The civil miscellaneous appeal is partly allowed. The judgment and award made in M.C.O.P.No.1441 of 2017 dated 27.08.2019 by the Special District Judge, MCOP Tribunal, Salem, is modified to the above extent.

14.The second respondent Insurance Company is directed to deposit the modified/ enhanced award amount before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the appellants 1 and 3/ claimants 1 and 3 are permitted to withdraw their share as apportioned by the Tribunal, along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The second claimant/ second appellant is permitted to withdraw his share as apportioned by the Tribunal, along with accrued interest and proportionate costs, on making proper and necessary application before the Tribunal and on production of necessary proof with regard to his majority. If the



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second claimant/ second appellant is still minor, his share shall be kept in an interest yielding fixed deposit with anyone of the Nationalized Bank, initially, for a period of three years to be renewed at periodic intervals until he attain majority and the interest derived from out of the said share of the minor shall be paid to the first claimant/ mother every quarter to be utilized for the welfare of the said minor.

15.The appellants/ claimants shall not be entitled to any interest for the period of delay, if any, in filing the appeal. The appellants/ claimants are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Special District Judge, MCOP Tribunal, Salem, shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the appellants/ claimants.

16.The civil miscellaneous appeal is partly allowed. No costs.

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

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To

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1.The Special District Judge,
MCOP Tribunal, Salem.

M.DHANDAPANI,J.
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