



C.M.A.No.1087 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1087 of 2023

R.Mahalakshmi

.. Appellant

Vs.

1.MSRS Development and Construction
India Pvt. Limited, H-133, Periyar Nagar
3rd main road, Erode-638 001.

2.The Branch Manager
National Insurance Co. Limited
No.18, Court street, Kumaran Road
Tiruppur.

.. Respondents

(The 1st respondent remained exparte before
the Tribunal. Hence, notice to the 1st respondent
is dispensed with)



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2023 made in M.C.O.P.No.265 of 2018 on the file of the Exclusive Motor Accident Claims Tribunal, Tiruppur.

For Appellant : Mr.M.Lokesh

For R2 : Mrs.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal is filed challenging the portion of the award fixing 50% contributory negligence on the part of the deceased as well as for enhancement of compensation granted by the Tribunal in the award dated 31.01.2023 made in M.C.O.P.No.265 of 2018 on the file of the Exclusive Motor Accident Claims Tribunal, Tiruppur.

2. The appellant filed M.C.O.P.No.265 of 2018 on the file of the Exclusive Motor Accident Claims Tribunal, Tiruppur, claiming a sum of



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Rs.40,00,000/- as compensation for the death of her son viz., R.Manokaran, who died in the accident that took place on 21.07.2017.

3. According to the appellant, on the date of accident, when the deceased Manokaran was riding his Pulsar motorcycle bearing Registration No.TN 39 BU 5589 on Kannarpalayam to Thenthiruppathi Nall Road, Near Co-operative Bank, Pellathi, from South to North direction on the extreme left side of the road, the driver of the tipper lorry bearing Registration No.TN 33 BP 0963, which was coming from North to South direction, drove the same in a rash and negligent manner, dashed against the Pulsar motorcycle ridden by the deceased and caused the accident. Due to the injuries sustained in the accident, Manokaran died in the hospital on 22.07.2017.

4. The 1st respondent, owner of the tipper lorry, remained exparte before the Tribunal.

5. The 2nd respondent/Insurance Company filed counter statement and denied all the averments made by the appellant in the claim petition.



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According to the 2nd respondent, the accident occurred only due to the negligent act of the deceased. The deceased did not possess driving license at the time of the accident. Therefore, the 2nd respondent is not liable to pay any compensation to the appellant. The 2nd respondent also denied the age, occupation and monthly income of the deceased. The total compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant, mother of the deceased examined herself as PW1, one Karuppaiah, an eye-witness to the accident was examined as P.W.2 and 12 documents were marked as Exs.P1 to P12. The respondents did not let in any oral and documentary evidence. Aadhar card of P.W.2 was marked as Ex.X1.

7. The Tribunal after considering the evidence and documents filed on the side of the appellant, held that due to rash and negligent driving by the driver of the tipper lorry belonging to the 1st respondent as well as the



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deceased, the accident had occurred, fixed 50 : 50 contributory negligence on the part of the driver of the tipper lorry belonging to the 1st respondent & the deceased, awarded a sum of Rs.23,45,000/- as compensation to the appellant and directed the 2nd respondent/Insurance Company to pay a sum of Rs.11,72,500/- being 50% negligence as compensation to the appellant.

8. Challenging the portion of the award fixing 50% contributory negligence on the part of the deceased and not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

9. The learned counsel appearing for the appellant submitted that the finding on negligence by the Tribunal is without any basis and the award of compensation is meagre. The Tribunal had fixed the contributory negligence on the basis of rough sketch and on surmises and conjectures. It is settled law that the contributory negligence cannot be presumed and there must be a definite evidence to establish the contributory negligence on the side of the



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deceased. The driver of the offending vehicle is not examined and hence, the Tribunal ought to have accepted the evidence adduced on the side of the appellant and fixed entire negligence on the part of the driver of the offending vehicle.

9(i). Insofar as the quantum of compensation awarded by the Tribunal, the learned counsel for the appellant submitted that the deceased was an Engineering student at the time of accident and since the accident took place in the year 2017, the Tribunal ought to have fixed the notional income of the deceased at Rs.20,000/- per month. The learned counsel in support of his contentions, relied on the following judgments:

(i) 2019 (2) TNMAC 153 (DB) [Managing Director, Tamil Nadu State Transport Corporation Limited, Periyamilaguparai, Trichirappalli vs. Neela and another];

(ii) CDJ 2019 MHC 5187 [The Managing Director, TNSTC (VPM) Ltd., Villupuram and another vs. Bharanidharan and another];



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Learned counsel for the appellant has not challenged the award of compensation under the other heads and hence, prayed for setting aside the finding on negligence and enhancement of compensation.

10. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company submitted that the rough sketch Ex.P3 produced on the side of the appellant shows that the accident took place on the centre of the road. P.W.2, who claims to be an eye-witness, stated that the accident took place on the left extreme side of the road. In view of the said contradiction, the Tribunal was right in holding that the deceased was guilty of contributory negligence. Learned counsel further submitted that the notional income fixed by the Tribunal is just and reasonable, it did not call for any interference and prayed for dismissal of the appeal. In support of her contentions, the learned counsel relied on the following judgments:

(i) **2022 (2) TNMAC 293 [Umayamma and others vs. C.Raju and others];**



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(ii) **2021 (1) TNMAC 337 [Branch Manager, National Insurance Company Limited vs. Saraswathi and others];**

11. Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

12. The issues involved in the above appeal are:

(i) Whether the Tribunal was right in fixing 50% contributory negligence on the deceased?

(ii) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

The appellant has examined the eye-witness as P.W.2. The version of P.W.2 is that the deceased was riding his motorcycle on the left extreme side of the road. In view of the above, this Court is of the view that the Tribunal erred in fixing 50% contributory negligence on the deceased only on the basis of the rough sketch. It is well settled that the contributory negligence cannot be fixed on the basis of presumptions and there must be a definite evidence to



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prove the same. However, in the facts and circumstances of the present case, this Court finds that the evidence adduced on the side of the appellant and rough sketch marked as Ex.P3 would show that the accident had not taken place in the exact manner as stated in the claim petition or as per the version of P.W.2. The accident had taken place almost near the centre median of the road. The evidence therefore, suggests that the deceased had also contributed to the accident. Considering the facts and circumstances of the case and also in the absence of any independent evidence on the part of the respondents, this Court fixes 20% & 80% negligence on the part of the deceased and driver of the tipper lorry belonging to the 1st respondent respectively. The 2nd respondent/Insurance Company being an insurer of the 1st respondent is liable to pay 80% of the compensation to the appellant.

13. Insofar as the quantum of compensation awarded by the Tribunal is concerned, the learned counsel appearing for the appellant cited two judgments of the Division Bench of this Court in support of his contention that the notional income of the deceased has to be fixed at Rs.20,000/-. The



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fixation of notional income depends on several factors. The learned counsel for the 2nd respondent has also cited judgments, wherein this Court had fixed a sum of Rs.15,000/- per month as notional income of the deceased. Merely because in one case, the notional income had been fixed at Rs.20,000/-, the same cannot be applied in all the cases. It depends upon facts and circumstances of the case, age of the deceased, year of the accident and number of dependents etc. Therefore, this Court is of the view that the notional income fixed by the Tribunal at Rs.15,000/- is just and reasonable and no interference is called for. In view of the above, the compensation of Rs.23,45,000/- awarded by the Tribunal is confirmed. The 2nd respondent/Insurance Company is directed to pay a sum of Rs.18,76,000/- being 80% of the compensation, to the appellant.

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal at Rs.23,45,000/- 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 2nd



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respondent/Insurance Company is directed to deposit a sum of Rs.18,76,000/-

being 80% of the compensation, 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. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

28.07.2023

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

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To

The Exclusive Motor Accident Claims Tribunal, Tiruppur.



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SUNDER MOHAN, J

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