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C.M.A.No.2486 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2486 of 2021

1. Abdulgani
2. Mumtaj Begam
... Appellants/Petitioners
Vs.

1. P. Sivakumar
2. United India Insurance Company Ltd.,
Rep. by its Manager,
No.50 A, Pallivasal Street,
Perambalur – 621 212.
... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 24.03.2021 made in M.C.O.P.No.781 of 2017 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

For Appellants : M/s. L.Meena
For Mr.C.Vidhusan
For R1 : No appearance
For R2 : M/s. I. Malar

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the appellants against the Award passed in M.C.O.P.No.781 of 2017, dated 24.03.2021, on



the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur, for enhancement of compensation and also challenging the contributory negligence fixed on the deceased.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. On 16.08.2017 at about 7.00 p.m., the deceased Mohammed Sulaiman, the son of the claimants herein was riding his two wheeler (Hero Honda) bearing Registration No.TN 46 R 3594 from New bus stand to four road junction from West to East direction, while he was waiting at 'U' turn on the North to South direction abetting the East West road opposite to Kumar Paalpannai, a Ashok Leyland multi axle Goods Vehicle belongs to the first respondent, driven by its driver in rash and negligent manner and dashed on the two wheeler of the deceased, which resulted in causing death and the Perambalur police have filed First Information Report. The claimants have approached the Claims Tribunal, seeking compensation by invoking Section 166 of the Motor Vehicles Act.



4. The Insurance Company has contested the claim and contended that the deceased herein is the tortfeasor and the lorry was driven by its driver with due care and caution hence, the respondents are not liable to pay compensation and they have also disputed the quantum of compensation awarded.

5. The Tribunal after considering the evidences placed on record, has held that the deceased is also contributed to the extent of 20% and the lorry driver also negligently driven the vehicle and caused the accident. Accordingly, the liability for the accident was fixed as 20% : 80% respectively. The Tribunal has also quantified the compensation and awarded a sum of Rs.6,79,200/- to the claimants with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realisation.

6. Aggrieved over the contributory negligence fixed on the deceased and also for enhancement of compensation, this appeal has been filed.

7. The learned counsel for the claimants has submitted that the deceased was waiting for 'U' turn for crossing the road, in the safest place i.e., in the middle of the road to avoid the accident. However the lorry driver



driven the vehicle in rash and negligent manner without due attention to the vehicle waiting to cross the road dashed on the two wheeler which resulted in accident. The lorry driver alone is responsible for the accident and the contributory negligence fixed on the deceased is not proper and prays to set aside the same. The learned counsel further submitted that the notional income fixed on the deceased is also on the lower side hence prays to enhance the same.

8. Per Contra, the learned counsel for the Insurance Company has submitted that the Tribunal has categorically held and given a finding based on the evidences placed on record that the rider of the two wheeler has suddenly taken 'U' turn in the road, which contributed to the accident. Hence the Tribunal has fixed 20% negligence on the part of the deceased herein. Eventhough, the percentage fixed for contributory negligence is also on the lower side and the Insurance company has not preferred any appeal against the award. The learned counsel has further submitted that the compensation quantified is also as per the norms followed by this Court. Hence prays to confirm the award.

9. I have considered the rival submissions made on both sides and also perused the records available on record.



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10. The Tribunal in its award while appreciating the evidence of P.W.2 as eyewitness has held that the Tipper Lorry bearing Registration No.TN 46 J 8412 was proceeding from East to West direction, the deceased moved the vehicle for taking 'U' turn, which resulted in accident. The Tribunal has also relied on the First Information Report, which was registered immediately after the accident wherein, it is also stated that the deceased was taking 'U' turn, at the same time, driver of the lorry has driven the vehicle without taking due care to avoid the accident.

11. I have also perused the evidence of P.W.2 and the contents in the FIR.

12. The evidence of P.W.2 and FIR as discussed by the Tribunal shows that at the time of accident, the deceased was not awaiting in the center median to cross the road but he moved from the median and at the time of entering into the road, the accident had taken place. The evidence also shows that the deceased without taking due care on seeing on coming vehicle, entered the road, which resulted in accident. This Court is of the view that the contributory negligence fixed by the Tribunal on the deceased is proper and the same is hereby confirmed.



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13. With regard to the quantum of compensation is concerned, the Tribunal has fixed a sum of Rs.6,500/- as the notional income of the deceased. The claimants have claimed a sum of Rs.16,000/- per month as income to the deceased, who was working as a Driver at Monisha Real Estate, Perambalur, but they have not examined any witness to prove the income. However they were marked driving licence of the deceased to show that he was eligible to drive LM vehicles. Since the claimants have not examined the employer of the deceased, the Tribunal has chosen to fix the notional income and this Court is of the view the same is proper. However, the Tribunal has fixed Rs.6,500/- per month as notional income for the deceased who is aged about 36 years, the multiplier '15' is adopted based on the passport-Ex.P7. This Court has consistently following the Division Bench Judgment of this Court in *Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]* by adopting the cost of index, fixed the notional income of the person who were not able to prove the income. Admittedly, in this case, the accident had taken place in the year 2017, the deceased was aged about 36 years at the time of accident and was a Driver, the Judgment of this Court cited supra, the applicable notional income based on the cost of index is as follows: $[Rs.6,500/- \times 272] / 129$ (2008 as base



year) = Rs.13,705/-]. Hence, this Court is inclined to fix the income as Rs.13,500/-.

14. The Tribunal has rightly added 40% future prospects as per the Judgment of the Hon'ble Apex Court in *National Insurance Co. Ltd., vs. Pranay Sethi and other* [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680] and the same is hereby confirmed. The Tribunal has rightly applied multiplier '15' as per the Judgment of the Hon'ble Apex Court in *Sarla Verma and others Vs. Delhi Transport Corporation and others* [2009 ACJ 1298 SC : 2009 (6) SCC 121], by considering the age of the deceased is 36 years at the time of the accident. The deceased is bachelor hence deduction of 50% made towards his personal expenses. Hence loss of dependency is assessed as follows:

Annual income (Rs.13,500/- x 12)	= Rs.1,62,000/-
add Future prospects @ 40%	= Rs.64,800/-
Yearly income of the deceased	= Rs.2,26,800/-
Yearly contribution to his family (deduction of 1/2)	= Rs.1,13,400/-
Applicable Multiplier '15' (Rs.1,13,400 x 15)	
Total Loss of dependency	= Rs.17,01,000/-

15. The Tribunal has not awarded any amount under the head loss of consortium to the parents. The claimants are entitled for



Rs.40,000/- under the head loss of consortium as per the Judgment of the Hon'ble Apex Court in *Magma General Insurance Co. Ltd., vs. Nanu Ram and Others [2018 (18) SCC 130]*. Accordingly, a sum of Rs.80,000/- awarded under the head loss of consortium. As far as the compensation awarded under conventional heads such as funeral expenses and loss of estate are concerned, the Tribunal has awarded just and reasonable compensation and the same are hereby confirmed.

16. Thus the compensation awarded by the Tribunal under various heads are hereby 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	Rs.8,19,000/-	Rs.17,01,000/-	Enhanced
2.	Loss of Consortium	---	Rs.80,000/-	Granted
3.	Loss of Estate	Rs.15,000/-	Rs.15,000	Confirmed
4	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
	Total Compensation less contributory negligence 20%	Rs.8,49,000/- Rs.6,79,200/-	Rs.18,11,000/- Rs.14,48,800/-	Enhanced by Rs.7,69,600/-



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17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.6,79,200/- is hereby enhanced to Rs.14,48,800/- [Rupees Fourteen Lakhs Forty Eight Thousand and Eight Hundred only] together with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit, excluding the default period, if any. The second respondent/Insurance Company 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 weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.781 of 2017, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur. On such deposit, the appellants/claimants are entitled to withdraw the amount, now determined by this Court along with interest and costs, as per the apportionment fixed by the Tribunal, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants without any formal application. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary



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Court fee on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

21.12.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Perambalur.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



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K.RAJASEKAR,J.

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