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C.M.A.No. 1339 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.06.2023

Coram:

THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.No. 1339 of 2022

1. Anbarasi
2. Anbuselvi
3. Anbunithi

... Appellants

Versus

1. Palanisamy
2. The United India Insurance Company Limited
146/N, 2nd Floor, Kumar Complex
Anna Salai, Tiruchengode-637 211.
3. The United India Insurance Company Limited
Branch at 1170, Muthiah Complex
Mettur Road, Erode-638 011.

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 25.11.2021 made in M.A.C.T.O.P. No. 670 of 2018 on the file of the Motor Vehicle Accidents Claims Tribunal, Special District Judge, Erode.

For Appellants : Mr.C. Paraneedharan
For Respondent-1 : Set Exparte before the Tribunal
For RR 2 and 3 : Mr.D. Bhaskaran



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JUDGMENT

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The above appeal is filed by the claimants seeking enhancement of compensation.

2. The married daughters and son of the deceased filed the claim petition seeking compensation for the death of the deceased who died in motor accident which occurred on 04.05.2018. According to the claimants, while the deceased was riding his two wheeler bearing Registration No. TN-88W-1265, the driver of the Chevrolet Tavera Tourist Motor Cab bearing Registration No. TN-34-M-0187 drove the vehicle in a rash and negligent manner and hit against the deceased causing him fatal injuries.

3. According to the claimants, the deceased was aged about 74 years at the time of accident and was earning a sum of Rs.14,000/- per month as an agriculturist. The claimants, therefore, filed the claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of the deceased.



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4. Before the Claims Tribunal, the first respondent remained set ex-parte and the claim petition was contested by the respondents 2 and 3 who filed a common counter denying all the averments made in the claim petition apart from disputing the negligence, liability and quantum of compensation claimed.

5. Before the Claims Tribunal, the claimants examined themselves as PW1 to PW3 and Ex.P1 to Ex.P28 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

6. The Claims Tribunal, on an assessment of the entire evidence on record held that the deceased contributed to the accident and fixed the contributory negligence of the deceased at 25%. The Claims Tribunal, on the basis of the entire evidence, awarded a sum of Rs.3,56,149/- as compensation along with 7.5% interest, after deducting 25% towards contributory negligence of the deceased. Not satisfied with the award passed by the Tribunal, the above appeal has been filed for enhancement of compensation.



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7. The learned counsel for the appellants submitted that the Tribunal failed in awarding any sum towards “loss of dependency”. The learned counsel further submitted that the finding of the Tribunal towards contributory negligence of the deceased was erroneous and prayed for enhancement of compensation.

8. The learned counsel for the respondents, on the other hand, submitted that the award of the Tribunal was just, fair and reasonable and did not call for any interference in the appeal.

9. I have heard both the learned counsels and perused the materials available on record.

10. The Tribunal considering the discrepancies in the FIR and the claim petition and also that the deceased aged about 34 years was driving the two wheeler without a driving license found that the deceased contributed to the accident. The Tribunal fixed the contributory negligence of the deceased at 25%. In my view on the facts of the case, the percentage towards contributory negligence can be fixed at 15%



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instead of 25%.

11. In view of the above discussion, the award of the Tribunal is modified as follows:-

<i>S.No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal (Rs.)</i>	<i>Award of this Court (Rs.)</i>
1.	Loss of Funeral Expenses	15,000	15,000
2.	Damages to clothes and Articles	15,000	15,000
3.	Loss of Parental consortium	1,20,000	1,20,000
4.	Loss of Medical Expenses	2,24,865	2,24,865
5.	Loss of Pain and Suffering	1,00,000	1,00,000
		4,74,865	4,74,865
6	25% deducted in respect of the deceased share	1,18,716	71,230
	Total	3,56,149	4,03,635

12. In the result, the appeal is partly allowed. The deduction towards contributory negligence of the deceased fixed by the Tribunal at 25% is reduced to 15%. Therefore, Rs.71,230/- is deducted from Rs.4,74,865/- towards 15% contributory negligence of the deceased. In effect, the claimants shall be entitled to enhanced compensation of Rs.4,03,635/- along with 7.5% interest from the date of the claim petition



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till the date of deposit.

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13. The learned counsel for the respondents 2&3/Insurance Company submitted that the amount awarded by the Tribunal was already deposited before the Tribunal. Therefore, there shall be a direction to the respondents 2&3/Insurance Company to deposit the balance enhanced amount along with 7.5% interest within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are entitled to withdraw the same by making proper application before the Tribunal.

12.06.2023

msm

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

To

1. The Special District Judge,
Motor Accidents Claims Tribunal, Erode.

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



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N.MALA.J.,

msm

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