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C.M.A.No.1371 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

CORAM :

THE HONOURABLE **MR. JUSTICE SUNDER MOHAN**

Civil Miscellaneous Appeal No.1371 of 2022
and C.M.P.No.9925 of 2022

United India Insurance Company Ltd.,
Rep by its Divisional Manager, Vellore,
(Insurer of Ashok Leyland Truck TN 04 AE 0079),
having office at TKM Complex,
Katpadi Road, Vellore Town. ... Appellant/2nd respondent

Versus

1. Asina
2. Imthiyas Ahmed
3. Nasrin Banu
4. Askar Ahmed
5. Sanco Transport Ltd, Chennai-01
(owner of Ashok Leyland Truck TN 04 AE 0079)
having office at S.T.Towers, No.24 & 25,
II Beach Line, Chennai – 01.
6. Irfan



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7.The New India Assurance Co Ltd.,
Rep by its Division Manager, Vellore.
(Insurer of Eicher Truck TN 04 M 0860),
having office at CSI Complex, Officers Line,
Vellore Town.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 18.02.2022 made in M.C.O.P.No.101 of 2018 on the file of the Motor Accidents Claims Tribunal (1 Additional District and Sessions Court), Vellore.

For Appellant : Mr. D.Bhaskaran
For Respondents : Mr. R.Nalliyappan for R1 to R4
No appearance for R5 to R7

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the findings as regards negligence as well as the quantum of compensation granted by the Tribunal in the award dated 18.02.2022 made in M.C.O.P. No.101 of 2018 on the file of the Motor Accident Claims Tribunal, (I Additional District and Sessions Court), Vellore.

2. The appellant/Insurance Company is the second respondent in M.C.O.P.No.101 of 2018 on the file of the Motor Accident Claims Tribunal



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(I Additional District and Sessions Court), Vellore. Respondents 1 to 4 filed the said claim petition claiming a sum of Rs.70,00,000/- as compensation for the death of one Ayyas Ahmed, who died in the accident that took place on 19.07.2017.

3. According to respondents 1 to 4/petitioners, on 19.07.2017 at about 11:00 P.M, the deceased was travelling as a load man in Eicher Truck bearing Registration No.TN 04 M 0860, and returning to Vellore on the Bangalore National Highway, an Ashok Leyland Truck bearing registration No.TN 04 AE 0079, which was coming in the same direction, hit the Eicher Truck from behind. As a result, the deceased sustained injuries and died on the way to the C.M.C., Hospital, Vellore; that the deceased was aged 21 years at the time of the accident and was earning Rs.25,000/- per month; that the respondents 1 to 4 who are dependents, i.e., mother, brothers and sister of the deceased are entitled to a compensation of Rs.70,00,000/-. Hence, respondents 1 to 4 filed a claim petition claiming compensation against the appellant and respondents 5 to 7.



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4. The respondents 5 and 6/owners of the Ashok Leyland Truck, and Eicher Truck, remained exparte before the Tribunal.

5. The appellant/second respondent/Insurer of Ashok Leyland Truck filed a counter statement and stated that the accident took place because of negligent driving of the driver belonging to the Eicher Truck in which, the deceased travelled and thus, the driver of the Eicher Truck contributed to the accident and hence, the entire negligence cannot be fixed on the driver of the Ashok Leyland Truck and consequently liability on the 2nd respondent.

6. The 7th respondent/New India Assurance Co Ltd./ Insurer for the Eicher Truck, filed a counter statement and stated that the deceased travelled in the Eicher Truck; that there was no negligence on the part of the driver of the Eicher Truck and the accident took place only on account of the negligence on the part of the driver of the Ashok Leyland Truck/offending vehicle and submitted that only the appellant was liable to pay compensation.



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7. Before the Tribunal, the 1st respondent examined herself as P.W.1

and L.Kadrivel, an eyewitness to the occurrence, as P.W.2.

Ten documents were marked as Exs.P1 to P10 on the side of respondents 1 to 4. The appellant neither marked any document nor examined any witness on their side.

8. The Tribunal, after considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Ashok Leyland Truck belonging to the 5th respondent and directed the appellant/Insurance Company being the insurer, of the said Truck to pay a sum of Rs.31,36,000/- as compensation to the respondents 1 to 4/claimants. The Tribunal dismissed the claim petition against respondents 5 and 6.

9. Against the said award dated 18.02.2022 made in M.C.O.P.No.101 of 2018, granting compensation to the respondents 1 to 4, the appellant/Insurance Company has come out with the present appeal



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challenging the findings as regards negligence as well as the quantum of compensation awarded by the Tribunal.

10. The learned counsel for the appellant/Insurance Company submitted that the driver of the Eicher Truck applied the sudden brake. As a result, the driver of Ashok Leyland's vehicle happened to hit the Eicher Truck; that the Tribunal ought to have considered the evidence and fixed 50% contributory negligence on the part of the driver of Eicher Truck; that in any case, the quantum of compensation awarded by the Tribunal is excessive; that the accident took place in the year 2017 and the notional income fixed by the Tribunal at Rs.15,000/- per month in the absence of any evidence is erroneous. The learned counsel further submitted that the Tribunal had deducted 1/3rd towards personal expenses. However, the Tribunal ought to have deducted 50% towards personal expenses as per the dictum of the Honourable Supreme Court in *Sarla Verma Vs. Delhi Transport Corporation* reported in **2009 (6) SCC 121** and therefore, prayed for setting aside the award of the Tribunal.



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11. The learned counsel for the respondents 1 to 4 per contra, submitted that in order to establish the negligence, the respondents 1 to 4 have examined P.W.1 and P.W.2; that the version of the appellant is that the accident took place only because of the Eicher Truck, in which the deceased travelled suddenly stopped cannot be accepted; that the appellant has not let in any evidence contrary to the evidence let in by the respondents 1 to 4. Hence, the Tribunal had rightly fixed the entire negligence on the offending vehicle namely, Ashok Leyland Truck. The learned counsel further submitted that though respondents 1 to 4 have not established the income of the deceased, the Tribunal had rightly fixed the notional income at Rs.15,000/- per month since the accident was of the year 2017. The learned counsel further submitted that respondents 1 to 4 are the widowed mother, brothers and sister of the deceased; that in view of the large number of dependants, the Tribunal deducted 1/3rd amount of his income towards personal expenses and the same is in accordance with the Judgment of the Hon'ble Apex Court in ***Sarla Verma Vs.Delhi Transport corporation*** (cited supra) and thus, prayed for dismissal of the appeal.



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12. Though notice has been served on the respondents 5 to 7, none has entered an appearance on behalf of them.

13. Heard the learned counsel for the appellant as well as the learned counsel for respondents 1 to 4 and perused the materials available on record.

14. This Court, on perusal of the evidence and the material records, finds that respondents 1 to 4 had examined P.W.1 and P.W.2 to establish the manner in which the accident took place. P.W.2 is the eyewitness to the occurrence. The evidence of P.W.2 would show that the offending vehicle had come from behind and hit the vehicle in which, the deceased has travelled. In the cross examination nothing was elicited to disbelieve P.W.2. There is no contrary evidence let in by the appellant to show that the vehicle in which, the deceased had travelled, also contributed to the accident. In the absence of any such evidence, the Tribunal was right in not fixing contributory negligence and fixing the entire negligence on the offending vehicle. Hence, the finding of the Tribunal directing the appellant/Insurance Company to pay



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entire compensation cannot be faulted.

WEB COPY 15. As regards compensation, this Court is of the view that the notional income fixed by the Tribunal at Rs.15,000/- for the accident which took place in the year 2017 is reasonable and just. There is no reason to interfere with the notional income fixed by the Tribunal at Rs.15,000/. However, this Court finds that the deceased was survived by his widowed mother and two brothers and her sister. It is seen that, except for one brother, other siblings are older than the deceased. It is also submitted by the appellant/Insurance company that the elder sister of the deceased had also married at the time of the accident. However, there is no evidence to establish the fact as to ascertain whether the elder sister was married at the time of the accident.

16. Be that as it may, this Court, on the facts and circumstances of the case, finds that this is not a case where there is a widowed mother and a large number of dependents on the deceased. One of the brothers is older than the deceased and was married, admittedly, at the time of the accident. In such circumstances, this Court is of the view that the deduction has to be 50% towards personal expenses and not 1/3rd. As stated earlier, it is not the case



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where a large number of dependants besides the widowed mother on the deceased. Thus, applying the principle of law laid down in Sarala Verma's case (cited supra), this Court is of the view that a 50% deduction is fair and just towards personal expenses. Since the deceased was aged 21 years at the time of the accident, the multiplier applicable is 18. Thus the compensation awarded by the Tribunal under the head Loss of Income is calculated as follows:

$$\text{Rs.15,000} + 6000(15000 \times 40\%) \times 12 \times 18 \times 1/2 = \text{Rs. 22,68,000/-}$$

17. This Court also finds that the compensation awarded under the head Loss of Love and Affection to brothers and sister at Rs.30,000/- (Rs.10,000/- X 3) is erroneous. The Tribunal ought to have awarded Rs.40,000/- each. Hence, the compensation under the head Loss of Love and Affection to the respondents 2 to 4 is enhanced from Rs.30,000/- to Rs.1,20,000/- (Rs.40,000/- each). Since the accident is of the year 2017, 10% enhancement may not be required. Hence, the compensation under these heads Loss of Love and Affection (Mother), Funeral Expenses and Loss of Estate is now reduced to Rs.40,000/-, Rs.15,000/- and Rs.15,000/-



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respectively.

WEB COPY 18. The compensation awarded by the Tribunal under other heads is just and reasonable and hence, the same is confirmed. Thus the compensation awarded by the Tribunal is reduced from Rs.31,36,000/- to Rs.24,63,000/- break up 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 Income	30,24,000/-	22,68,000/-	Reduced
2.	Loss of Love and affection (i) mother	44,000/-	40,000/-	Confirmed
	Loss of Love and affection (ii) brothers and sister	30,000/-	1,20,000/-	Enhanced
3.	Transport Expenses	5,000/-	5,000/-	Confirmed
4.	Funeral Expenses	16,500/-	15,000/-	Confirmed
5.	Loss of Estates	16,500/-	15,000/-	Confirmed
	Total	Rs.31,36,000/-	24,63,000/-	Reduced by Rs.6,73,000/-

19. In the result, this Civil Miscellaneous Appeal is partly allowed, and the compensation awarded by the Tribunal at Rs.31,36,000/- is hereby reduced to Rs.24,63,000/- together with interest at the rate of 7.5% per annum



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(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 modified award amount along with interest and costs, less the amount already deposited if any, within a period of six (6) weeks from the date of receipt of a copy of this Judgment. On such deposit, the first respondent is permitted to withdraw Rs.12,63,000/-, and the respondents 2 to 4 are permitted to withdraw Rs.4,00,000/- each, along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.101 of 2018, if the entire award amount has already been deposited by them. No costs. Consequently, the connected Miscellaneous Petition is closed. This appeal is dismissed as against the respondents 5 and 6.

17.07.2023

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



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To

- 1.The Motor Accidents Claims Tribunal
No.I, Additional District and Sessions Court
Vellore.
- 2.The Section Officer
VR Section
High Court of Madras
Chennai.



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SUNDER MOHAN, J
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Civil Miscellaneous Appeal No.1371 of 2022
and C.M.P.No.995 of 2022



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