



C.M.A.No. 1442 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 07.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No. 1442 of 2022

1.Poulraj
2.Anithachristina
3.Divya Arokia Rani

... Appellants

Versus

1.S.Raju
2.The Branch Manager
United India Insurance Company Limited
Branch Office, No. 80, SBLT Building
Polytechnic Road, Chinthamani- 563 125
Karnataka State.

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 01.09.2021 made in M.C.O.P.No. 837 of 2019 on the file of Motor Accident Claims Tribunal, and Special District Court for Motor Accident Claims Cases, Krishnagiri.

For Appellants : Mr.S.P. Yuaraj
For R1 : Unclaimed
For R2 : Mr.S.Arunkumar



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JUDGMENT

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The claimants have filed the above appeal seeking enhancement of compensation. The claimants 1 and 2 are the parents of the deceased and the 3rd claimant is the sister of the deceased.

2. According to the claimants, on 14.08.2016, while the deceased was riding his motorcycle along with 3rd appellant herein as pillion rider bearing Registration No.TN-24-AC-5882, a Santro Car bearing Registration No.KA-05-MA-180 belonging to the 1st respondent and insured with the 2nd respondent, driven by its driver in a rash and negligent manner hit against the motorcycle of the deceased. Due to the impact, the deceased was thrown off from his motorcycle and he sustained fatal injuries. According to the claimants, the accident occurred only due to the rash and negligence of the driver of the Santro Car.

3. The deceased was aged about 19 years at the time of accident and he was studying III year B.E, Electrical and Electronics Engineering. The deceased was only son of the Claimants 1 & 2. The claimants filed the claim petition claiming a sum of Rs.50,00,000/- as compensation.



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4. Before the Tribunal, the first and second respondents remained ex-parte and the claim petition was contested by the second respondent/Insurance Company. The second respondent/Insurance Company filed a detailed counter affidavit denying all the allegations made in the claim petition apart from denying the negligence, liability and quantum of compensation.

5. Before the Claims Tribunal, the 3rd appellant examined herself as PW1 and Ex.P1 to Ex.P19 were marked in support of the claim. On the side of the 2nd respondent/Insurance Company, the SSI of police, Kandhikuppam Police Station examined himself as RW1 and Ex.R1 to R6 were marked.

6. The Claims Tribunal, on an assessment of the entire evidence on record, rendered a finding of negligence against the driver of the first respondent. The Tribunal awarded a sum of Rs.20,49,083/- as compensation along with 7.5% interest and deducted 10% from the said award amount towards contributory negligence of the deceased as the deceased did not possess a valid driving license at the time of the accident.



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Aggrieved by the finding on negligence and the quantum of compensation awarded by the Claims Tribunal, the claimants have filed the above appeal for enhancement of compensation.

7. The learned counsel for the appellants submitted that the deduction of 10% towards contributory negligence was unsustainable. The learned counsel further submitted that the assessment of notional income of the deceased was very much on the lower side. He further submitted that the sister of the deceased was awarded only Rs.20,000/- towards “loss of consortium” which was against the judgment in *Pranayasethi Case*.

8. The learned counsel for the second respondent/Insurance Company, on the other hand, submitted that the compensation awarded by the Claims 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.



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10. The Tribunal fixed Rs.12,000/- as the monthly income of the deceased as he was a student pursuing III year B.E., Electrical and Electronics Engineering. I am of the view that the assessment of the notional income of the deceased at Rs.12,000/- is very much on the lower side and therefore, the notional income is fixed at Rs.14,000/- per month. Considering the education of the deceased and also the fact that he was the only son of his parents, the “loss of dependency” is arrived at Rs.21,16,800/-.

11. The learned counsel for the appellants is justified in his submission that mere non-possession of driving license would not lead to an inference of contributory negligence in the absence of clear evidence on contributory negligence. The Claims Tribunal therefore erred in deducting 10% towards contributory negligence of the deceased. Therefore, the finding of the Tribunal on contributory negligence is set aside and the claimants are entitled to compensation without any deduction.



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

S.No.	Various Heads	Award of the Tribunal	Award of this Court
1.	Loss of dependency	Rs.18,14,400	Rs.21,16,800
2.	Loss of Estate	Rs.15,000	Rs.15,000
3.	Funeral Expenses	Rs.15,000	Rs.15,000
4.	Loss of Consortium	Rs.1,00,000	Rs.1,20,000
5.	Medical Expenses	Rs.1,04,683	---
Total		Rs.20,49,083	Rs.23,71,483

Loss of Dependency:
= Rs.14,000 – Rs.7,000 (1/2 personal expenses).
= Rs.7,000xRs.2,800/- (40% future prospects).
= Rs.7,000+Rs.2,800/-=Rs.9,800.
= Rs.9,800/-x12x18 = Rs.21,16,800/-

13. The claimants are entitled for enhanced compensation of Rs.23,71,483/- along with 7.5% interest from the date of claim petition till the date of deposit. There shall be a direction to the second respondent/Insurance Company to deposit the enhanced compensation after deducting the amount already deposited, if any, with interest as stated above within a period of eight weeks from the date of receipt of a copy of this judgment. The apportionment of shares shall be as fixed by the Tribunal.

14. Accordingly, the Civil Miscellaneous Appeal is partly



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allowed. There shall be no order as to costs.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

To

- 1.The Special District Court
for Motor Accident Claims Cases, Krishnagiri.
- 2.The Section Officer, V.R.Section,
High Court, Madras.



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N.MALA.J.,

msm

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