



C.M.A.No.1951 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1951 of 2023

1.A. Thirunavukkarasu
2.T. Kasturi

... Appellants

Vs

1.S. Sheik Mohideen
2.The Divisional Manager,
The New India Assurance Co. Ltd.,
DO III Floor, No.179, JN Street,
Puducherry – 605 001.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.04.2022 in MCOP.No.3421 of 2017 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge for LAOP Cases), Cuddalore.

For Appellants : Mrs.Ramya V. Rao

For Respondents : Mrs.R. Sree Vidhya, for R2
R1 – Ex parte



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J U D G M E N T

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This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 23.04.2022 made in M.C.O.P.No.3421 of 2017 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge for LAOP Cases), Cuddalore.

2. The appellants filed M.C.O.P. No.3421 of 2017 on the file of the the Motor Accident Claims Tribunal (Special Sub Judge for LAOP Cases), Cuddalore claiming a sum of Rs.25,00,000/- as compensation for the death of one Kabilar @ Kabil, who died in the accident that took place on 23.07.2017.

3. According to the appellants, on 23.07.2017 at about 10.45 hours, while the deceased Kabilar was riding a two wheeler bearing Registration No.TN-37-AE-7085 on the Tiruchengode to Erode road, near Murasukuttai Diversion road, Kuchipalayam, the car bearing Registration No.TN-86-A-9981, which was coming in opposite direction, driven by its



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driver in a rash and negligent manner, hit against the motorcycle and caused the accident; that in the above said accident; the deceased Kabilar sustained grievous injuries; that immediately he was admitted in the Government Hospital, Erode and died on the same day. Hence, the appellants filed claim petition claiming compensation against the respondents.

4. The first respondent remained ex parte before the Tribunal.

5. The second respondent filed counter statement denying all the averments made by the appellants in the claim petition. According to the second respondent, the rider of the two wheeler rode the motorcycle in a rash and negligent manner along with three pillion riders and invited the accident; and in any case the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. The 2nd appellant examined herself as PW1 and marked Ex.P.1 to Ex.P.8. The second respondent, did not examine any witness or marked any document.



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7. The Tribunal after considering the evidence and documents filed on the side of the appellants, held that the accident occurred due to rash and negligent driving by the driver of the car and directed the second respondent to pay a sum of Rs.14,30,100/- as compensation to the appellants.

8. Aggrieved by the said award, the appellants have preferred the present appeal seeking enhancement of compensation.

9. The learned counsel for the appellants submitted that though the appellants had stated that the deceased was employed in a Spinning Mill, the Tribunal had taken a very meagre notional income of Rs.10,000/- per month. The learned counsel further submitted that the filial consortium was awarded to the only one appellant and both are entitled to Rs.40,000/- each. The learned counsel further submitted that the Tribunal had erroneously fixed 10% contributory negligence on the deceased without any basis and prayed for enhancement of the compensation.



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10. Since the first respondent remained ex parte before the Tribunal, the learned counsel for the appellants prayed for dispensing with notice to him. Hence, notice to the first respondent dispensed with.

11. The learned counsel for the second respondent per contra submitted that the award of the Tribunal is just and reasonable. The appellants have not produced any evidence to prove the income or avocation of the deceased. Therefore, the Tribunal was justified in fixing the notional income as Rs.10,000/- per month. That apart, the Tribunal had fixed 10% contributory negligence on the deceased for violating the rules under the Motor Vehicles Act, since four persons travelled in a two wheeler along with the deceased and the deceased also did not wear helmet at the time of accident. Thus, the order of the Tribunal does not warrant any interference and hence, prayed for dismissal of the appeal.

12. The questions involved in the instant appeal are-

1. Whether the Tribunal was right in fixing 10% contributory negligence on the deceased?
2. Whether the Tribunal had awarded just and reasonable compensation?



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13. As regard first question, this Court finds that the evidence let in on either side revealed that the deceased did not wear helmet at the time of accident. Ex.P1, FIR shows that 4 persons travelled in a two wheeler including the deceased. In view of the aforesaid violation, the Tribunal was justified in fixing 10% contributory negligence on the part of the deceased and no interference is called for.

14. As regards quantum of compensation, this Court finds that though the appellants had not proved the income of the deceased, PW.1 had stated that the deceased was working in a Spinning Mill. The deceased was aged 24 years at the time of accident. Considering the age, avocation and the year of accident, this Court is of the view that it would be just and reasonable to fix the notional income as Rs.14,000/- per month. The appellants are entitled to 40% enhancement towards future prospects. The multiplier applicable is '18'. The deceased was a bachelor at the time of accident and hence, 50% has to be deducted towards his personal expenses. Thus, the compensation amount towards loss of dependency has to be: -

$$14,000+5,600(14,000\times 40\%)\times 12\times 18\times 1/2=\text{Rs.}21,16,800/-$$

The award under the head filial consortium has to be enhanced to



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Rs.80,000/-, as both the appellants are each entitled to Rs.40,000/-. The award under the heads loss of estate and funeral expenses are reduced to Rs.15,000/- each. Thus, the compensation awarded by the Tribunal is enhanced from Rs.14,30,100/- to Rs.20,04,120/-, break-up is as follows -

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	15,12,000/-	21,16,800/-	Enhanced
2.	Loss of estate	16,500/-	15,000/-	Confirmed
2.	Loss of filial consortium	44,000/-	80,000/-	Confirmed
3.	Funeral expenses	16,500/-	15,000/-	Confirmed
	Total	15,89,000/-	22,26,800/-	
	Less 10% Contributory Negligence	1,58,900/-	2,22,680/-	Enhanced by Rs.5,74,020/-
	Net Compensation	14,30,100	20,04,120/-	

16. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,30,100/- is hereby enhanced to Rs.20,04,120/- together with interest at 7.5% per annum from the date of petition till the date of deposit. The appellants are not entitled for any interest for the delay period on the amount of Rs.5,74,020/- enhanced by this Court as per the order of this



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Court dated 07.08.2023, made in C.M.P.No.11786 of 2023 in

C.M.A.SR.No.70015 of 2023. 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 (6) weeks from the date of a receipt of copy of this Judgment.

On such deposit, the first appellant, who is the father of the deceased is entitled to Rs.6 lakhs and the second appellant, who is the mother of the deceased is entitled to remaining amount. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

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Index: Yes/No

Neutral Citation: Yes/No

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To

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1. The Motor Accident Claims Tribunal,
(Special Sub Judge for LAOP Cases), Cuddalore.
2. The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

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