



C.M.A.Nos.2645 & 2646 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal Nos.2645 & 2646 of 2021

1. Uthirapathy
2. Chandira

... Appellants / Petitioners in
CMA No.2645/2021
MCOP No.326/2019

1. Rajendran
2. Vasantha

... Appellants / Petitioners in
CMA No.2646/2021
MCOP No.328/2019

Vs.

1. Jerome Stanly

2. The Manager,
Royal Sundaram General Insurance Co., Ltd.,
Maruthi Insurance Broking Private Ltd.,
PLA Motors, No.88/A.1,
Chennai Bypass Road,
Elambur, Opposite St.Joseph School,
Perambalur – 621 212.

... Respondents/Respondents
in both CMAs

COMMON PRAYER: Civil Miscellaneous Appeals filed under
Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree
dated 17.04.2021 made in M.C.O.P.No.326 of 2019 and M.C.O.P.No.328
of 2019, on the file of the Motor Accidents Claims Tribunal, Principal
District Judge, Perambalur.



For Appellants in both CMAs : Mr. S. P. Yuaraj
For R1 in both CMAs : No appearance
For R2 in both CMAs : Mr. G. Vasudevan

COMMON JUDGMENT

Both the Civil Miscellaneous Appeals have been filed by the claimants, seeking enhancement of compensation in the Award passed in M.C.O.P.No.326 of 2019, for the death of one Pandiyarajan and M.C.O.P.No.328 of 2019, for the death of one Ranjith Kumar, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

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

3. The case of the claimants in both the cases are that on 14.04.2019 at 4.30 p.m., the deceased Ranjithkumar riding the two-wheeler bearing Registration No.TN 61 H 6724 along with his friends one Aravindhan and Pandiarajan as pillion riders on the Thanjavur to Ariyalur Road, while they reached near Vetriyur Pirivu Road, a Car bearing Registration No.TN 61 B 3412 came behind them in rash and negligent



manner and dashed against the two-wheeler resulting which, the two-wheeler thrown out and the pillion rider viz., Pandiarajan sustained fatal injuries and died on the way to hospital and the rider of the two-wheeler viz., Ranjithkumar sustained fatal injuries subsequently died after taking treatment at Thanjavur Medical College Hospital. In this regard, a criminal case was also registered against the driver of the car in Crime No.95 of 2019 under Sections 279, 337 @ 304 A IPC by the Keelapalur Police Station.

4. The respondents filed counter and contended that the driver of the first respondent car drove it with due care and caution however the petitioners (3 persons) travelling the two-wheeler in rash and negligent manner in the mud road and suddenly entered into the road and hit the car, thereby, the accident had occurred. The rider of the two-wheeler alone is responsible for the accident. They further contended that the driver of the car was not having valid driving licence at the time of accident and also the rider of the two-wheeler did not wear helmet at the time of accident. Three persons were travelled in the two-wheeler is the violation of policy conditions and that the petitions are bad for non-joinder of necessary parties. They also disputed the age, avocation and income of the deceased persons. Hence prays to dismiss the claim.



5. Based on the evidences placed on record, the Tribunal has quantified the compensation and awarding a sum of Rs.7,49,760/- in each M.C.O.P.Nos.326 & 328 of 2019 and also held both the drivers of vehicles have negligently caused the accident to the tune of 20% : 80%.

6. Aggrieved over the Award passed by the Tribunal the claimants in both claim petitions, have filed these Appeals seeking enhancement of compensation.

7. The learned counsel for the claimants has submitted that the deceased namely Ranjithkumar was riding his two-wheeler with normal speed however the driver of the car drove it in rash and negligent manner and hit on the two-wheeler and caused the accident. Hence the driver of the car alone is responsible for the accident. The learned counsel further submitted that the contributory negligence fixed by the deceased in both the cases is on the higher side. Hence, prays to reduce the contributory negligence and enhance the claim.

8. Per Contra, the learned counsel for the Insurance Company has contended that since rider of the two-wheeler drove it in rash and



negligent manner, the accident had occurred and also contended that three persons were travelled in the two-wheeler, there is a violation of policy condition and that the rider of the two-wheeler and the pillion rider were not wearing helmet at the time of accident hence the Tribunal has rightly fixed the contributory negligence to the deceased persons and the same requires no modification. Hence prays to dismiss the appeal.

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

10. In this case, the Tribunal while deciding the negligent act on the part of the driver of the car has held that since three persons were travelled in the two-wheeler the deceased persons may also contributed to the accident accordingly, fixed 20% of the contributory negligence. The Apex Court in *Mohammed Siddique vs. National Insurance Company Ltd.*, [AIR 2020 SC 520 : AIR Online 2020 SC 29], has categorically held that three persons travelled in the two-wheeler alone will not attract the contributory negligence unless there is evidence placed on record to show that due three persons travelled in the vehicle, the rider was not able to ride



the vehicle effectively or the act of three persons travelled led to accident.

But no evidence produced on record to show that, it had impacted or led to accident.

11. In this case, admittedly the deceased Ranjithkumar and the deceased Pandiarajan were not wearing helmet and the Division Bench Judgment of this Court in *The Oriental Insurance Company Limited vs. Indirani and 5 Others [C.M.A.(MD) Nos.987 and 988 of 2014]* and *R.Mallika and 2 others vs. A. Babu and 4 others [C.M.A.No.3235 of 2014]* by relying on Section 129 of the Motor Vehicles Act, held that non-wearing of helmet attracts the contributory negligence. Accordingly, the Tribunal has fixed 20% contributory negligence and this Court finds eventhough the reason for deducting 20% contributory negligence on the ground that three persons travelled in the vehicle is not sustainable. Three persons travelled in the two-wheeler without wearing helmet, as observed by this Court clearly attracts the contributory negligence to the extent of 20%.

12. As far as the quantum of compensation is concerned, the claimants were not able to prove the monthly income of the deceased



persons. However, the Tribunal has taken note of the evidence of P.W.1 that the deceased Ranjithkumar was working as a Driver by profession and the deceased Pandiarajan was working as a Mason, fixed the the notional income of Rs.6,000/- per month. 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 persons who were not able to prove the income. Admittedly, in this case, the deceased Ranjithkumar was a Driver, aged about 24 years and the deceased Pandiarajan was a Mason, aged about 23 years at the time of accident, the Judgment of this Court cited supra, the applicable notional income based on the cost of index is as follows:

<i>S.No.</i>	<i>Financial Year</i>	<i>Cost of Inflation Index</i>
1	2001-2002	100
2	2002-2003	105
3	2003-2004	109
4	2004-2005	113
5	2005-2006	117
6	2006-2007	122
7	2007-2008	129
8	2008-2009	137
9	2009-2010	148



S.No.	Financial Year	Cost of Inflation Index
10	2010-2011	167
11	2011-2012	184
12	2012-2013	200
13	2013-2014	220
14	2014-2015	240
15	2015-2016	254
16	2016-2017	264
17	2017-2018	272
18	2018-2019	280
19	2019-2020	289
20	2020-2021	301
21	2021-2022	317
22	2022-2023	331
23	2023-2024	348

*for example: (Rs.6,500/- X 289) / 129 = Rs.14,562/-
@Rs.15,000/- (notional income of the deceased)*

13. This Court is inclined to modify the notional income fixed by the Tribunal based on the dictum laid down in the Hon'ble Apex Court judgment cited supra and the accident taken place in the year 2019-2020 the income fixed as Rs.15,000/- and the same is calculated as follows in both appeals:

Date of accident	= 14.04.2019
Cost of Inflation index	= 289 (Financial Year 2019-2020)



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C.M.A.Nos.2645 & 2646 of 2021

$$\begin{aligned}\text{Notional income of the deceased} &= (6500 \times 289) / (129) \\ &= \text{Rs.14,562/- @ Rs.15,000/-}\end{aligned}$$

14. The accident is of the year 2019 a sum of Rs.15,000/- is fixed for the notional income of the deceased and considering the age of the deceased Ranjithkumar is 24 years and the deceased Pandiarajan is 23 years at the time of accident, multiplier '18' is adopted and considering their avocation, 40% awarded as future prospects and the deceased persons are bachelor, hence 50% deducted towards their personal expenses. Accordingly, the following calculations have been made in both appeals:

$$\begin{aligned}\text{Annual income (Rs.15,000/- x 12)} &= \text{Rs.1,80,000/-} \\ \text{add Future prospects @ 40\%} &= \text{Rs.72,000/-} \\ \text{Yearly income of the deceased} &= \text{Rs.2,52,000/-} \\ \text{Yearly contribution to his family} & \\ \text{(deduction of 1/2 = Rs.1,26,000/-)} &= \text{Rs.1,26,000/-} \\ \text{Applicable Multiplier '18'} & \\ \text{Total Loss of dependency} &= \text{Rs.22,68,000/-}\end{aligned}$$

15. The Tribunal has not awarded compensation under the head loss of consortium. The dependants of the deceased are also entitled for compensation under the head loss of consortium as per the recent Judgment of this Court in *Magma General Insurance Co. Ltd., vs. Nanu Ram and*



Others [2018 (18) SCC 130]. Accordingly, a sum of Rs.40,000/- each awarded under the head loss of consortium. The Tribunal has rightly awarded a sum of Rs.15,000/- each under the head loss of estate and funeral expenses and this Court is of the view the same are just and reasonable and the same are hereby confirmed.

16. Thus the compensation awarded by the Tribunal under various heads in C.M.A.No.2645 is 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.9,07,200/-	Rs.22,68,000/-	Enhanced
2.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
3.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Loss of Consortium	---	Rs.80,000/-	Granted
	Total Compensation	Rs.9,37,200/-	Rs.23,78,000/-	Enhanced by
	less 20%	Rs.7,49,760/-	-	Rs.14,40,800/-
			Rs.19,02,400/-	Rs.11,52,640/-
			-	

17. Thus the compensation awarded by the Tribunal under



various heads in C.M.A.No.2646 is 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.9,07,200/-	Rs.22,68,000/-	Enhanced
2.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
3.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Loss of Consortium	---	Rs.80,000/-	Granted
	Total Compensation	Rs.9,37,200/-	Rs.23,78,000/-	Enhanced by
			-	Rs.14,40,800/
	less 20%	Rs.7,49,760/-		-
			Rs.19,02,400/	Rs.11,52,640/
			-	-

18. In the result,

(i) C.M.A.No.2645 of 2021 is partly allowed and the compensation awarded by the Tribunal at Rs.7,49,760/- is hereby enhanced to Rs.19,02,400/- [Rupees Nineteen Lakhs Two Thousand and Four Hundred only] along 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.

(ii) C.M.A.No.2646 of 2021 is partly allowed and the



compensation awarded by the Tribunal at Rs.7,49,760/- is hereby enhanced to Rs.19,02,400/- [Rupees Nineteen Lakhs Two Thousand and Four Hundred only] along 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.

(iii) The Second Respondent - Insurance Company is directed to deposit the amount now awarded 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.Nos.326 & 328 of 2019 respectively on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur. On such deposit, the appellants/claimants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced



C.M.A.Nos.2645 & 2646 of 2021

compensation. There shall be no order as to costs in both the appeals.

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19.12.2023

ssi

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,
VR Section,
High Court,
Madras.

K.RAJASEKAR,J.

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C.M.A.Nos.2645 & 2646 of 2021

C.M.A.Nos.2645 & 2646 of 2021

19.12.2023