



C.M.A.No.1638 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1638 of 2020

1.Nallammal

2.Dr.E.R.Nagarajan

3.R.Sekar

... Appellants

Vs

1.G.Venugopal

2.M/s.United India Insurance Company Limited,

1170, Muthiah Complex, Mettur Road,

Erode Post & Taluk, Erode District.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award and Judgment made in M.C.O.P.No.398 of 2013 on the file of Motor Accident Claims Tribunal Cum Subordinate Court, Sankari dated 08.11.2019 for fixing contributory negligence and also for enhancement of compensation.

For Appellants

... M.C.Kulanthaivel

For Respondents

... No appearance for R1

... Mr.S.Arunkumar for R2



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JUDGMENT

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Challenging the impugned award dated 8.11.2019, passed by the Motor Accident Claims Tribunal Cum Subordinate Court, Sankari, the claimant has filed the present appeal questioning the negligence as well as the quantum of compensation fixed by the Tribunal.

2. The appellants herein are the wife and sons of the deceased Rajagounder. It is the case of the claimants that on 18.06.2013, at about 7.00 P.M., when the deceased along with one Vasantha as a pillion rider while trying to cross the road in the two wheeler bearing Reg.No.TN-52-A-2818, the innova car bearing Reg.No.TN-33-BF-5959 belonging to the first respondent, insured with the second respondent, driven by its driver in a rash and negligent manner dashed behind the two wheeler of the deceased due to which the deceased and his wife were thrown out of the two wheeler and sustained fatal injuries resultantly, the wife of the deceased died on the spot. Immediately after the accident, the deceased Rajagounder was taken to Vinayaga Missions Hi-Tech Hospital, Seeragapadi, wherein he was declared dead on 19.06.2013.



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Aggrieved by which, the appellants have filed a claim petition claiming compensation towards the death of the deceased.

3. Before the Tribunal, the 1st claimant examined herself as P.W.1 and examined the P.W.2 and marked Ex.P-1 to Ex.P-15. No witnesses were examined on the side of the respondents nor any documents were marked. After considering all the oral and documentary evidence, the Tribunal has awarded the compensation amount of Rs.6,46,000/- and in view of the fact that 30% contributory negligence was fixed on the claimant, accordingly, directed payment of a sum of Rs.4,50,000/-, which is the 70% compensation to be paid by the insurance company. Aggrieved by the negligence as well as the quantum of compensation fixed by the Tribunal, the appellants have filed the present appeal.

4. Learned counsel appearing for the claimants submitted that claimants have assailed the impugned award on the ground that the contributory negligence of 30% fixed on the deceased is wholly erroneous as it is only the



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driver of the offending vehicle which had contributed to the accident as it was driven in a rash and negligent manner. It is further submitted that no compensation has been awarded under the conventional heads such as Loss of Consortium and Loss of love and affection to the wife and the minor child of the deceased respectively. Therefore this Court may award compensation under the said heads as well.

5. Per contra, learned counsel appearing for the second respondent /Insurance company submitted that after considering the oral and documentary evidence, the Tribunal has rightly fixed the negligence on the part of the deceased who was trying to cross the road in the national highways where there was no zebra crossing which is in violation of traffic rules. Further, the quantum of compensation arrived by the Tribunal is also just and reasonable which cannot be said to be inadequate. Accordingly, he prayed for dismissal of the Appeal.



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6. This Court heard the learned counsel appearing for the Claimants and the learned counsel appearing for the Insurance Company and perused the materials available on record.

7. The factum of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. However, claimants have questioned the negligence which has been fastened on the deceased to the extent of 30%. During the course of investigation, a rough sketch has been drawn, which is marked as Ex.P-5 reveals that the accident had taken place near centre median of the road in the national highways where there was no zebra crossing. Based on the evidence of Ex.P-5, the Tribunal had come to a conclusion that the said accident had taken place when the deceased was trying to cross the road in his two wheeler where there was no zebra crossing the offending vehicle which came in a rash and negligent manner had dashed against the two wheeler of the deceased. The said finding of the Tribunal clearly shows that the deceased had also contributed to the said accident and therefore, the contributory negligence to the extent of 30% fixed on the part of



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the deceased does not require any interference.

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8. Insofar as the compensation awarded under the head loss of earning, no proof of income has been produced by the claimants. In the absence of any proof of income, the Tribunal, considering the age and income of the deceased, had fixed the notional income at Rs.10,000/- per month and has awarded a sum of Rs.5,60,000/- by applying the multiplier method after deducting 1/3rd towards the personal expenses of the deceased which cannot be said be inadequate. Accordingly, the compensation awarded under the said head requires no interference.

9. Further, the Tribunal has awarded a sum of Rs.15,000/- under the head "Loss of Estate": Rs.40,000/- under the head " Loss of Amenities"; Rs.15,000/- under the head "Funeral expenses" and Rs.16,000/- under the head "Medical expenses". This Court finds that while the compensation awarded under the head "Loss of Amenities" is not sustainable, however, the compensation awarded under the other heads are just and reasonable and does



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not require any interference. Accordingly, the compensation awarded under the head "Loss of Amenities" is set aside while the compensation awarded under the other heads are confirmed. Further, it is to be pointed out that no compensation has been awarded under the heads "Loss of Consortium" and "Loss of Love & Affection". This Court applying the ratio laid down in *Pranay Sethi case* by the Constitution Bench, awards a sum of Rs.40,000/- under the head "Loss of Consortium" to the 1st claimant and a sum of Rs.40,000/- to each of the claimants 2 & 3 totalling to a sum of Rs.80,000/-.

10. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads are modified as under :-

S. No	Head of Compensation	Amount awarded by Tribunal	Amount awarded by this Court
1.	Loss of earning	Rs.5,60,000/-	Rs.5,60,000/-
2.	Loss of Estate	Rs.15,000/-	Rs.15,000/-
3.	Loss of Amenities	Rs.40,000/-	-
4.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
5.	Medical Expenses	Rs.16,000/-	Rs.16,000/-
6.	Loss of Consortium	-	Rs.40,000/-
7.	Loss of love and affection (Rs.40,000/- * 2)	-	Rs.80,000/-
	TOTAL	Rs.6,46,000/-	Rs.7,26,000/-



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11. Accordingly, the appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.6,46,000/- to Rs.7,26,000/-** of which compensation to the tune of 30% of contributory negligence on the part of the deceased shall stand deducted. Accordingly, after deducting 30% towards contributory negligence on the part of the deceased, the amount of compensation to be paid by the second respondent-Insurance Company is quantified at **Rs.5,08,200/-** and the insurance company is directed to the credit the same to the credit of M.C.O.P.No.398 of 2013 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the Appellants/claimants through RTGS within a period of two weeks thereafter. The Appellants/claimants are directed to pay the necessary Court fee for the enhanced compensation amount. The Tribunal below shall



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disburse the compensation enhanced by this Court upon proof of payment of Court fee is by the Appellants/claimants. There shall be no order as to costs in the present appeal.

01.12.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

NHS

To

- 1.The Motor Accident Claims Tribunal Cum
Subordinate Court,
Sankari.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.



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M.DHANDAPANI, J

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