



C.M.A.No.1941 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

Civil Miscellaneous Appeal No. 1941 of 2014

P. Sammanasumery

.. Appellant

Versus

1.R.Karunanidhi

2.The National Insurance Company Ltd

Divisional Office, Pondicherry.

.. Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decretal order dated 22.01.2013 made in MCOP No. 355 of 2011 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Virudhachalam.

For Appellant : Mr. P. Jagadeesan

For Respondent : Mr. C.R. Krishnamoorthy for R2

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation made under the impugned award dated 22.01.2013 passed by the Motor Accident Claims Tribunal/Principal Subordinate Judge,



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Virudhachalam, in M.C.O.P No.355 of 2011.

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2. The Motor Accidents Claims Tribunal, under the impugned award, has directed the payment of compensation of Rs.1,28,000/- together with interest and costs to the appellant/claimant which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of income (Rs.3000/- (-)1/3 =Rs.2000/- x 12 = Rs.24,000 x 9 =Rs.2,16,000/- less 50% contributory negligence)	1,08,000/-
Funeral Expenses	5,000/-
Transport expenses	5,000/-
Loss of love and affection	10,000/-
Total	1,28,000/-

3. The learned counsel appearing on behalf of the appellant mainly contended that the entire quantum of compensation awarded by the Tribunal is very low. The deceased was a Mason and was earning a sum of Rs.15,000/- per month. The Tribunal fixed a sum of Rs.3,000/- as monthly income of the deceased, which is meagre. As far as the negligence aspect is concerned, without examining the driver of the motor cycle, the Tribunal had committed grave error in fixing the contributory negligence on the part



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of the deceased at 50%. Further, the compensation awarded under the heads namely funeral expenses, loss of love and affection, transport expenses are meager. Hence, the learned counsel prays for enhancement of compensation.

4. The learned counsel for the respondent/insurance company would submit that the appellant has not let in any material evidence to prove the avocation and income of the deceased, that the deceased was earning a sum of Rs.15,000/- per month at the time of accident. In the absence of material evidence, the Tribunal has fixed a sum of Rs.3,000/- as monthly income, which is not meagre. The contributory negligence fixed on the deceased by the Tribunal at 50% is correct. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

5. I have heard the learned counsel for the appellant as well as the second respondent and perused the entire materials on record.

6. The accident occurred on 15.09.2011 at about 11.00 hours at Andimadam, near Martina Church. The Andimadam police station,



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registered a case in Crime No.203 of 2011 in connection with the accident.

Due to the accident, the deceased sustained fatal injuries all over the body and died in the hospital. Thereafter, the claim petition was filed by the daughter of the deceased, the claimant /appellant herein. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties.

7. As far as the negligence is concerned, the Tribunal fixed 50% negligence on the part of the driver of the 1st respondent vehicle and also fixed contributory negligence at 50% on the part of the deceased. In this regard, on going through the records, it could be seen that PW2 is an eyewitness to the accident and she has clearly deposed that when the deceased was crossing the road for having a tea, the accident had happened. The main contention of the appellant is that without examining the driver of the motor cycle, the contributory negligence fixed by the Tribunal at 50% is erroneous in law. This Court finds force in such submission of the counsel for the appellant. The Tribunal had merely placed reliance on the first information report in which it was stated that the deceased suddenly darted



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across the road purportedly to have tea unmindful of the vehicle driven by the first respondent. If it is so, the respondents ought to have examined the driver of the vehicle, who is the best person to speak about the manner in which the accident had occurred. However, without examining the driver of the vehicle, the Tribunal, on its own, fixed 50% contributory negligence on the part of the deceased, which cannot be sustained. In normal circumstances, the Court could have remanded the matter for fresh consideration by the Tribunal, but taking note of the fact that the accident had taken place on 15.09.2011 and a decade had gone by, this Court is of the view that on considering the over all facts and circumstances of the case and taking note of the defence raised in the counter of the Insurance Company, fixing 80% negligence on the part of the driver of the vehicle and another 20% contributory negligence on the part of the deceased would meet the ends of justice.

8. The Tribunal has rightly applied the multiplier '9' since the deceased was aged 60 years at the time of accident as per Ex.P7, namely, copy of the postmortem certificate. Since the appellant is the daughter,



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1/3rd will have to be deducted towards the personal expenses of the deceased. The Tribunal has wrongly assessed the notional monthly income of the deceased as Rs.3000/-. After giving due consideration to the year of the accident and the avocation of the deceased as the Mason, the said assessment is not a correct assessment. Hence, this Court is inclined to fix a sum of Rs.5000/- as monthly income of the deceased. Thus, the loss of income is re-determined and modified as follows:

$$\text{Rs.5000/-} - (-) \text{1/3}^{\text{rd}} \text{ personal expenses} = \text{Rs.3334/-} \times 12 \times 9 =$$

Rs.3,60,072/-

9. In addition to the pecuniary loss sustained by the appellant, the Tribunal has granted the compensation of Rs.10,000/- towards love and affection, Rs.5,000/- towards funeral expenses and Rs.5,000/- towards transport charges. However, the compensation awarded by the Tribunal towards loss of love and affection and funeral expenses is low in the considered view of this Court. As per the settled practice, the compensation towards loss of love and affection is enhanced to Rs.40,000/- from Rs.10,000/- and towards funeral expenses, Rs.5,000/- is enhanced to



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Rs.15,000/- by this Court. The Tribunal has failed to award any compensation towards loss of estate and the appellant/claimant is legally entitled to as per the settled practice. Accordingly, a sum of Rs.15,000/- is awarded as compensation to the appellant towards loss of estate.

10. Insofar as the compensation awarded by the Tribunal under the head of transportation is concerned, it is a just compensation and it does not call for any interference by this Court.

11. For the forgoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.1,28,000/- to Rs.4,35,072/- as detailed hereunder.

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount (Rs.)</i>
Loss of income	1,08,000/- (Rs.3000/- (-)1/3 =Rs.2000/- x 12 = Rs.24,000 x 9 =Rs.2,16,000/- less 50% contributory negligence)	3,60,072/- (5000 (-) 1/3 = 3334 x 12 x 9)
Loss of Love &	10,000/-	40,000/-



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<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount (Rs.)</i>
affection		
Funeral Expenses	5,000/-	15,000/-
Loss of Estate	Nil	15,000 /-
Transportation	5,000/-	5,000/-
Total	1,28,000/-	4,35,072/-
Less contributory negligence		87,014/- (20%)
Total	1,28,000/-	3,48,058 rounded off to 3,48,060/-

12. In the result,

(i) This appeal is partly allowed and the second Respondent/Insurance Company is directed to deposit the modified amount i.e, Rs.3,48,060/- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP No.355 of 2011 within a period of six weeks from the date of receipt of a copy of this Judgment.



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ii) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the Appellant/claimant through RTGS within a period of two weeks thereafter. No costs.

06.04.2023

Index: Yes/No

Speaking/Non-speaking order: Yes/No

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To

1. The Motor Accident Claims Tribunal /
Principal Subordinate Judge,
Virudhachalam.

2. The Section Officer
V.R. Section, High Court of Madras.



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A.A.NAKKIRAN, J.
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