



CMA No. 2007 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 28.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2007 of 2022

1.Thangamani

2.Ramar

... Appellants

Versus

1.N. Mookaiyan

2.M/s.SPM Transports,
No. 366/1, CSI Shopping Complex,
Near Yaley Residency,
Brough Road, Erode.

3.The Oriental Insurance Co.,Ltd.,
Prakash Complex,
No. 965, Mettur Main Road,
Bhavani – 638 301.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 16.10.2020 made in M.C.O.P. No. 308 of 2017 on the file of the Motor Accident Claims Tribunal, IV Additional District and Sessions Court, Erode at Bhavani.

For Appellants : Mr. M. Lokesh.

For Respondents : Mr. Elveera Ravindran (for R3)

R1 & R2 - Exparte.



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J U D G M E N T

The appeal has been filed by the appellants challenging the contributory negligence fixed on the deceased and for enhancement of compensation awarded by the Tribunal in M.C.O.P. No. 308 of 2017 dated 16.10.2020.

2.The appellants had filed a claim petition before the Tribunal stating that on 02.01.2014, while the deceased was riding his motor cycle bearing Registration No. TN 36 U 8707 on Mettur – Bhavani Main Road from North to South near Chittar Telephone exchange pirivu, the first respondent drove the lorry bearing Registration No. TN 33 AV 6009 belonging to the second respondent from the opposite direction in a rash and negligent manner and hit against the motor cycle, as a result of which the deceased sustained severe injuries and died on the spot. Thus, the appellants filed claim petition claiming compensation.

3.The third respondent filed counter denying all the averments made in the claim petition. The accident occurred only due to the rash and negligent riding of the deceased. The first respondent is not



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responsible for the accident. Hence the third respondent is not liable to pay compensation. The petition is not maintainable for non-joinder of owner and insurer of the motorcycle. In any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

4.The first and second respondents remained exparte before the Tribunal.

5.The appellants examined two witnesses as PW1 and PW2 on their side and marked Ex.P.1 to Ex.P.13. Neither witness has been examined nor document has been marked on the side of the respondents.

6.The Tribunal after considering the oral and documentary evidence fixed the negligence on the deceased as well as on the first respondent in the ratio of 35 : 65 and directed the third respondent to pay a sum of Rs.7,60,700/-, being 65% of the award amount as compensation to the appellants. Aggrieved by the said award, the appellants have preferred the instant appeal.

7.The learned counsel for the appellants submitted that the finding



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of the Tribunal with regard to fixing 35% of contributory negligence on the deceased is without any basis. The learned counsel submitted that there is no evidence to show that the deceased had contributed to the accident in any manner. The Tribunal having found that the above vehicle, viz., Taurus lorry, was liable for negligence ought not to have fixed contributory negligence on the ground that the deceased did not have a valid license. The learned counsel further submitted that the Tribunal fixed 15% contributory negligence on the deceased for not wearing helmet which is also disproportionate. Hence, he prayed for allowing the appeal.

8. Though notice has been served, none has entered appearance on behalf of the first and second respondents.

9. The learned counsel for the third respondent per contra submitted that the award of the Tribunal is just and reasonable. In the absence of any evidence to prove the income of the deceased, the notional income taken by the Tribunal is reasonable. The learned counsel further submitted that admittedly, the deceased did not possess valid license and did not wear helmet at the time of accident. Therefore, contributory



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negligence fixed on the deceased is also justified. Hence, he prayed for dismissal of the appeal.

10.The questions that arise for consideration in the instant appeal are as follows:-

- (a) Whether the Tribunal was right in fixing 35% contributory negligence on the deceased for not wearing helmet and for not having valid license?
- (b) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

11.It is the admitted case of the appellants that the deceased did not have a valid driving license. It is also established through the evidence that the deceased did not wear helmet at the time of accident. Ex.P-5, postmortem certificate reveals that the deceased sustained serious head injuries which shows that the deceased did not wear helmet at the time of accident. However, the question is whether the Tribunal was right in fixing 35% contributory negligence for the above two violations. The



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Tribunal found that the evidence shows that the deceased was going on the Mettur - Bhavani Main Road from North to South and the offending vehicle, viz., Taurus lorry, came in the opposite direction in a rash and negligent manner and rammed into the motorcycle. Ex.P-1 FIR, was also registered against the driver of the offending vehicle. Ex.P-6, Final Report, filed after investigation also suggested that the accident took place on account of the rash and negligent driving of the offending vehicle. The third respondent has not let in any evidence to contradict the evidence adduced on the side of the appellants as regards the manner of accident. In such circumstances, this Court is of the view that fixing 35% negligence on the deceased for not holding a valid driving license and not wearing helmet is on the higher side. However, considering the views expressed by the Hon'ble Apex Court and this Court in similar matters, this Court is of the view that some percentage has to be fixed on the deceased as contributory negligence for the violations. Since the deceased did not wear helmet and did not possess valid driving license, this Court is of the view that in the facts and circumstances of the case, 20% can be fixed as contributory negligence on the deceased for the above two violations.



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12.As regards the quantum of compensation, this Court finds that the Tribunal had fixed Rs.6,500/- per month as notional income for an accident which took place in the year 2014. The appellants have stated that the deceased was a motorcycle mechanic. However, they have not produced any document to prove the income of the deceased. Considering the nature of the job done by the deceased, age and the year of the accident, this Court is of the view that it would be just and reasonable to fix Rs.9,000/- per month as notional income of the deceased. The deceased was aged 22 years and hence he is entitled to 40% towards future prospects. The multiplier applicable is 18. Since he was a bachelor, 50% has to be deducted towards personal expenses. Thus, the loss of income would be Rs.9,000/- + Rs.3,600 (Rs.9,000 + 40%) = Rs.12,600/- x 12 x 18 x 50% = Rs.13,60,800/-. The Tribunal awarded Rs.1,50,000/- towards loss of love and affection. However, the appellants being the parents of the deceased are entitled to filial consortium of Rs.40,000/- each. Hence, the compensation of Rs.1,50,000/- awarded under the head loss of love and affection is modified as loss of filial consortium and the same is reduced to Rs.80,000/-. The compensation of Rs.7,500/- awarded towards transportation is enhanced to Rs.15,000/-. The award under the other



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heads are just and the same are confirmed. Thus, the award of the

Tribunal is 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 income	9,82,800	13,60,800	Enhanced
2.	Loss of love and affection	1,50,000	---	Deleted
3.	Loss of filial consortium	---	80,000	Granted
4.	Loss of estate	15,000	15,000	Confirmed
5.	Transportation to hospital	7,500	15,000	Enhanced
6.	Funeral expenses	15,000	15,000	Confirmed
	Total	11,70,300	14,85,800	Enhanced by Rs.3,15,500/-
	Contributory Negligence	4,09,605 (@35%)	2,97,160 (@20%)	
	Net Compensation	7,60,695 rounded off to 7,60,700	11,88,640 rounded off to 11,88,700	Enhanced by Rs.4,28,000/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,60,700/- is hereby enhanced to Rs.11,88,700/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of



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petition till the date of deposit. The third respondent 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 appellants are permitted to withdraw their respective shares on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The appellants are directed to pay necessary Court fee, if any on the enhanced compensation. No costs.

28.07.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accident Claims Tribunal,
IV Additional District and Sessions Court, Erode at Bhavani.
2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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Dated: 28.07.2023