



C.M.A.No.1587 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.07.2023**

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1587 of 2022

1.K.Vijaya
2.K.Vinodhini
3.Vinothkumar
4.Rajasrinivasan
5.Saradhambal

... Appellants

Vs

1.D.Dhamodharan

2.The Manager,
Reliance General Insurance Co. LTd.,
Reliance House, 6th Floor, No.6,
Haddows Road, Nungambakkam,
Chennai - 600 006.

... Respondents

PRAYER:- This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.400 of 2019 dated 23.04.2022 on the file of the Motor Accidents Claims Tribunal/Sub Court, Panruti.



WEB COPY



C.M.A.No.1587 of 2022

For Appellants : Ms. Ramya V. Rao

For the Respondent-2 : Mr.P. Suresh Srinivasan

For R1 : Exparte before the Tribunal

J U D G M E N T

The Civil Miscellaneous Appeal has been filed challenging the portion of the award fixing 10% contributory negligence on the part of the appellant and for enhancement of the compensation in the judgment and decree in M.C.O.P.No.400 of 2019 dated 23.04.2022 on the file of the Motor Accidents Claims Tribunal/Sub Court, Panruti.

2. The appellants are the claimants in M.C.O.P.No.400 of 2019 on the file of Motor Accident Claims Tribunal, Sub Court, Panruti. They filed claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of Kolanji, who died in the accident that took place on 17.06.2019.



C.M.A.No.1587 of 2022

WEB COPY

3. The appellants filed the claim petition before the Tribunal stating that on 17.06.2019 at about 20.15 hours, while the deceased was riding his motorcycle bearing Registration No. TN-31-H-5533 from West to East on the extreme left, near Muthandikuppam Petrol Bunk, the first respondent who was riding his motorcycle bearing Registration No. TN-31-BM-7600, in a rash and negligent manner came in the opposite direction and dashed against the motorcycle of the deceased and caused the accident. In the accident, the deceased sustained injuries and died on 22.06.2019. The deceased was the sole bread winner of his family. Hence, the respondents 1 and 2 are liable to pay Rs.30,00,000/- as compensation.

4. The first respondent who is the owner of the vehicle, remained ex-parte before the Tribunal.

5. The second respondent/Insurance Company filed counter statement denying all the averments made in the claim petition and stated that the accident did not happen due to the act of the first respondent. Due



C.M.A.No.1587 of 2022

WEB COPY

to the rash riding the deceased fell down from his motorcycle. Since the deceased did not wear helmet at the time of accident and he sustained head injury. The second respondent/Insurance Company is not liable to pay compensation and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellants examined two witnesses as PW1 and PW2 and marked Exs. P1 to P9. The second respondent/Insurance Company examined RW1 and marked Exs.R1 to R4.

7. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to the rash and negligent riding by the first respondent as well as the deceased and fixed 90% contributory negligence on the first respondent and 10% negligence on the part of the deceased for not wearing helmet. The Tribunal awarded a sum of Rs.17,82,000/- after deducting 10% towards the contributory negligence as compensation to the appellants and directed the second respondent/Insurance Company being the insurer of the said motorcycle to



C.M.A.No.1587 of 2022

pay compensation to the appellants.

WEB COPY

8. The learned counsel for the appellants submitted that the Tribunal ought not to have fixed 10% contributory negligence on the deceased merely because the deceased was not wearing helmet at the time of accident. The learned counsel for the appellants submitted that though the Tribunal had considered Ex.P.9, salary certificate which was marked through PW1, wife of the deceased, the notional income fixed at Rs.12,000/- is meagre. The Tribunal had not considered the fact that the deceased was earning Rs.8,000/- by doing the business of cashew nuts trading. PW1 had stated in her deposition that the deceased was earning Rs.8,000/- from the said business. The respondent have not let in any evidence denying the said fact. The learned counsel further submitted that the Tribunal has not awarded any amount under the head “Loss of Estate”. The compensation awarded by the Tribunal under all other heads are also meagre and prayed for enhancement of compensation.



C.M.A.No.1587 of 2022

WEB COPY

9. Per contra, the learned counsel for the second respondent/ Insurance Company submitted that award of the Tribunal is just, fair and reasonable. Hence, there is no reason to interfere with the award passed by the Tribunal. The learned counsel for the second respondent further submitted that though the claimants have claimed that the deceased earned Rs.20,000/- per month, no proof was produced except for Ex.P.9 which showed that the deceased earned only Rs.12,000/- per month. The Tribunal had found that the deceased did not wear helmet at the time of the accident and had suffered head injuries due to the said accident. Hence fixing of contributory negligence on the deceased which is justified. Hence, he prayed for dismissal of the above appeal.

10. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent/Insurance Company and perused all the materials available on record. Though notice was served on the first respondent, none had entered appearance.



C.M.A.No.1587 of 2022

WEB COPY

11. Considering the facts and circumstances of this case and the manner in which the accident had taken place, the Tribunal found on the basis of the entire evidence that the deceased did not wear helmet at the time of accident. In view of the said fact, this Court is of the view that fixing 10% contributory negligence on the deceased is justified and no interference is called for. As regards the quantum, this Court finds that the Tribunal had accepted Ex.P.9 salary certificate and fixed the income of the deceased as Rs.12,000/- per month. However, the Tribunal had not taken into consideration the evidence of PW1 who had stated that the deceased was earning Rs.8,000/- per month by trading cashew nuts. It is also seen that the appellants have not produced any proof of income for the business of cashew nut trading. However, considering the fact that the accident took place in the year 2019, the deposition of PW1 and Ex.P.9, this Court is of the view that the monthly income of the deceased can be fixed at Rs.15,000/- per month. It is a matter of common knowledge that even the wages of daily wage worker was substantial at that time. The deceased is



C.M.A.No.1587 of 2022

WEB COPY

entitled to 25% increase towards future prospects. The multiplier applicable is 13 as the deceased was aged 49 years at the time of accident. Applying multiplier 13, adding 25% towards future prospects, deducting 1/4th towards personal expenses of the deceased the compensation under the head of "Loss of Dependency" is calculated as follows:- $\text{Rs.15,000} + \text{Rs.3,750} \times 12 \times 13 \times \frac{3}{4} = \text{Rs.21,93,750/-}$. Therefore, the appellants are entitled to compensation under the head "Loss of Dependency" at Rs.21,93,750/-. On perusal of the records, it reveals that the Tribunal has not awarded any compensation under the head "Loss of Estate". A sum of Rs.15,000/- is awarded under this head. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, they are confirmed.

12. Accordingly, the compensation awarded by the Tribunal is modified as follows:-



C.M.A.No.1587 of 2022

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1	Loss of Dependency	17,55,000	21,93,750	Enhanced
2.	Loss of Love and Affection	1,60,000	1,60,000	confirmed
3.	Funeral expenses	15,000	15,000	confirmed
4.	Damage to cloth and articles	10,000	10,000	confirmed
5.	Loss of consortium to the first appellant	40,000	40,000	confirmed
6.	Loss of Estate	---	15,000	granted
	Total	19,80,000	24,33,750	
	contributory negligence at 10%	1,98,000	2,43,375	
	Net compensation	17,82,000	21,90,375	Enhanced by a sum of Rs.4,08,375

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,82,000/- is hereby enhanced to **Rs.21,90,375/-** together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary



C.M.A.No.1587 of 2022

WEB COPY

Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the modified award amount 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. On such deposit, the appellants/claimants are permitted to withdraw their respective shares of the award amount as per the apportionment fixed by the Tribunal along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. No costs.

07.07.2023

Index : Yes/ No
Speaking order: Yes/ No
Neutral Citation: Yes/ No
gba
To

1. The Sub Court,
Motor Accidents Claims Tribunal. Panrutti.
2. The Section Officer, High Court, Madras.



WEB COPY



C.M.A.No.1587 of 2022

SUNDER MOHAN,J.

Gba

C.M.A.No.1587 of 2022

07.07.2023