



C.M.A.No.1800 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.1800 of 2020

- 1.Vellaiyammal
- 2.Mahesha (Minor)
- 3.Gowshika (Minor)
- 4.Santha

... Appellants/Petitioners

Vs

- 1.Saraswathi
- 2.M/s.United India Insurance Company Limited,
Branch Office, Arjunaa Tower,
248/164, Cherry Road,
Salem District.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, is so far fixing 50% contributory negligence on the part of the deceased driver and for enhancement of compensation in the Judgment and Decree dated 13.03.2020 made in M.C.O.P.No.546 of 2019, on the file of MACT/Principal District Court at Namakkal.



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For Appellants ... M/s.Ma.P.Thangavel
For Respondents ... [R1] ex-parte
... Ms.R.Sree Vidhya [R2]

JUDGMENT

Challenging the impugned award dated 13.03.2020 Passed by the Motor Accident Claims Tribunal, Principal District Court, Namakkal, the claimants have filed the present Appeal questioning the liability as well as the quantum of compensation awarded by the Tribunal.

2. It is the case of the claimants that on 22.07.2019, at about 6.50 p.m., while the deceased Sankar was driving the LPG Tanker bearing Reg.No.K.A 01 AF 9297, the lorry bearing Reg.No.TN 90 B 6527 which was coming from the opposite direction owned by the 1st Respondent and insured with the 2nd Respondent driven by its driver in a rash and negligent manner hit the vehicle driven by the deceased in which the deceased sustained grievous injuries and died on the spot for which, a case was registered in Crime.No.134/2019. The



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claimants being the legal representatives of the deceased 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 P.W.2 and marked Ex.P.1 to Ex.P.12. On the side of the respondents, no witnesses were examined nor any documents were marked. After considering all the oral and documentary evidence, the Tribunal had awarded a sum of Rs.30,94,000/- and in view of the fact that 50% contributory negligence was fixed on the deceased, accordingly, directed payment of a sum of Rs.15,47,000/-, which is the 50% compensation to be paid by the insurance company. Aggrieved by the said award dated 13.03.2020, the appellants/claimants have filed the present appeal.

4. Learned counsel appearing for the appellants/claimants submitted that the claimants have assailed the impugned award on the ground that the contributory negligence of 50% fixed on the deceased is wholly erroneous as it is only the driver of the offending vehicle which had contributed to the



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accident as it was driven in a rash and negligent manner. Learned counsel placing reliance on the deposition of P.W.2 who is the eye-witness to the occurrence, submitted that P.W.2 has categorically deposed that the accident had happened only due to the rash and negligent driving by the driver of the offending vehicle belonging to the 1st Respondent. When there is a categorical deposition of P.W.2, in the absence of any contra evidence, the finding recorded by the Tribunal that it was a head on collision and therefore the contributory negligence has to be fastened on both the drivers is wholly erroneous and therefore the portion of the order fastening contributory negligence on the deceased deserves to be set aside. It is the further submission of the learned counsel that no compensation has been awarded under the head loss of love and affection to the minor children and to the mother of the deceased and therefore this Court may award compensation under the said head as well.

5. Per contra, learned counsel appearing for the 2nd respondent-Insurance company submitted that the Tribunal has given specific finding that it was a



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head on collision and both the vehicles were coming in the centre of the road and dashed against each other and on that basis, the Tribunal had fixed the contributory negligence on both the drivers. Therefore, no interference is warranted with regard to the finding relating to the contributory negligence. However, insofar as the compensation under the head loss of love and affection, learned counsel fairly submitted that the Tribunal has not awarded any compensation under the said head and this Court may grant compensation under the said head.

6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the Appellants/claimants as well as the 2nd Respondent/Insurance Company and perused the materials available on record.

7. The factum of the accident is not in dispute. The only question is with regard to the negligence which has been fastened on the deceased to the extent of 50%. The finding of the Tribunal is to the effect that the lorries collided



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head on as they were coming in the centre of the road and therefore both the drivers have to be fastened with equal negligence. In this regard, P.W.2 is the cleaner in the lorry who was the eye witness to the occurrence assumes significance. P.W.2 in his deposition has stated that it was the offending vehicle which was driven in a rash and negligent manner which was the cause for the said accident. In the cross examination, P.W.2 has deposed that there was no median in the centre of the road to point out the question that the vehicle of the deceased was driven in the centre of the road and not driven on the left side of the road was categorically denied by P.W.2. The finding of the Tribunal with regard to the contributory negligence is premised on the finding that the right side of the lorries have suffered extensive damage and therefore both the drivers have contributed to the accident. But the said finding has not taken into account the evidence of P.W.2 which is a witness to the occurrence. The ocular testimony of the eye witness P.W.2 outweighs the Ex.P-5 & Ex-P-6, the motor vehicle inspections report which speaks about the extensive damages to both the lorries. Merely because both the vehicles have extensive damage cannot be the basis to hold that the vehicle driven by the deceased



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had also contributed to the accident. There should be sufficient material on the basis of which the contributory negligence can be fastened on the deceased. However, in the case on hand, there is no material except for the Motor vehicle inspections report i.e., Ex-P-5 & Ex.P-6 which talks of extensive damage to the said vehicles. In the absence of any evidence, discrediting testimony of P.W.2 basing the finding on Ex.P-5 & Ex.P-6 alone would not be sufficient to hold that the deceased had also contributed to the said accident. The rough sketch i.e., Ex-P-8 which had been filed by the Investigating Agency showing the cause of accident is also of no help to the Insurance Company as it no where suggests or reveals that the vehicle driven by the deceased was driven in rash and negligent manner. In fact, the FIR i.e., Ex.P-1 shows that the vehicle driven by the deceased was driven on the left side of the road. Such being the case, in the absence of any other evidencing testimony, the finding relating to contributory negligence cannot be sustained and the same deserves to be set aside by holding that the driver of the offending vehicle alone was not sole reason for the accident and the 2nd respondent as the insurer of the said vehicle is liable to indemnify the 1st



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respondent by paying compensation to the claimants.

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8. Insofar as the compensation awarded under various heads is concerned, neither the claimants nor the respondents have any quarrel with the same. The only grievance expressed on behalf of the claimants is that no compensation has been awarded towards love and affection for the claimants 2,3 & 4 who are the children and the mother of the deceased. As aforesaid, learned counsel appearing for the 2nd Respondent/Insurance company fairly admitted that no compensation has been awarded under the said head though it a conventional head and therefore this Court may award the amount of compensation under the said head. In such circumstances, this Court awards a sum of Rs.40,000/- to each of the claimants 2, 3 & 4 totalling to a sum of Rs.1,20,000/- in addition to the compensation awarded by the Tribunal. However, the compensation awarded under various heads such as Loss of Dependency, Future prospects, Loss of estate, Funeral Expenses & Loss of consortium stands confirmed.

9. In the above circumstances, the compensation awarded by the



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Tribunal under the below mentioned heads are modified as under :-

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S. No	Head of Compensation	Amount awarded by Tribunal	Amount awarded by this Court
1.	Loss of Dependency	Rs.21,60,000/-	Rs.21,60,000/-
2.	Future prospects 40%	Rs.8,64,000/-	Rs.8,64,000/-
3.	Loss of estate	Rs.15,000/-	Rs.15,000/-
3.	Funeral expenses	Rs.15,000/-	Rs.15,000/-
4.	Loss of Consortium	Rs.40,000/-	Rs.40,000/-
5.	Loss of love and affection (Rs.40,000/- * 3)	-	Rs.1,20,000/-
	TOTAL	Rs.30,94,000/-	Rs.32,14,000/-

10. Accordingly, the appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.30,94,000/- to Rs.32,14,000/-** of which compensation to the tune of 50% of contributory negligence on the part of the deceased shall stand deducted. Accordingly, after deducting 50% 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.16,07,000/-** and the insurance company is directed to the credit the same to the credit of



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M.C.O.P.No.546 of 2019 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit along with 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 appellants/claimants is permitted to withdraw the award amount as ordered by this Court, along with interest and costs, less the amount, if any, already withdrawn. The Tribunal below shall disburse the enhanced amount directly to the bank account of the claimants through RTGS within a period of two weeks thereafter. The appellants/claimants are directed to pay the necessary Court fee on the enhanced compensation amount. 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

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To

- 1.The Motor Accident Claims Tribunal Cum
Principal District Court,
Namakkal.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.



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M.DHANDAPANI, J

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