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C.M.A.No.832 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.832 of 2014

1.Pachamuthu
2.Kamalam

... Appellants

Vs.

1.Kalaiselvi
2.The Oriental Insurance Co. Ltd.,
Branch Office, K.V.A.Complex,
No.90-A, Thuraiyur Road,
Namakkal.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.479 of 2008 dated 05.01.2012 on the file of the Motor Accidents Claims Tribunal / Sub Court, Rasipuram.

For Appellants : Mr.Ma.P.Thangavel
For Respondents : R1 – NRN
Mr.R.Sivakumar for R2

J U D G M E N T

This appeal has been filed by the appellants/ claimants



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challenging the judgment and decree passed in M.C.O.P.No.479 of 2008 dated 05.01.2012 on the file of the Motor Accidents Claims Tribunal / Sub Court, Rasipuram.

2.The brief facts of the case is that on 07.10.2007 at about 04.00 p.m., the deceased Dhanapal was travelling in his Hero Honda bearing Registration No.TN 30 H 4428 in Namakkal to Salem Main Road, near Karaikurichi Four Road. At that time the driver of the lorry bearing Registration No.TN 28 / 7412 owned by the first respondent, drove the vehicle in a rash and negligent manner and dashed against the motor cycle, due to which, the deceased died on the spot.

3.Thereafter, the parents of the deceased Dhanapal/ appellants/ claimants filed claim petition before the Motor Accidents Claims Tribunal, claiming a sum of Rs.25 Lakhs as compensation for the death of their son. After adjudication, the Tribunal awarded a sum of Rs.7,03,000/- as compensation and fixed 50% contributory negligence on the part of the deceased Dhanapal and directed that the claimants are entitled to compensation of Rs.3,51,500/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit with costs. Aggrieved by the 50% contributory negligence



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fixed on the part of the deceased Dhanapal and seeking enhancement in compensation, the claimants have preferred this appeal.

4.The learned counsel appearing for the appellants submitted that the deceased was riding in the motor cycle cautiously on the left side of the road. The driver of the lorry owned by the first respondent and insured with the second respondent, drove the vehicle in a rash and negligent manner and dashed against the motor cycle, due to which, the deceased died on the spot. There is no negligence on the part of the deceased and the negligence has to be proved either by the owner of the vehicle or by the Insurance Company. In the present case, without any evidence the Tribunal fixed 50% contributory negligence on the part of the deceased, which is not sustainable one.

5.The learned counsel appearing for the appellants further submitted that the deceased was earning a sum of Rs.20,000/- per month and the claimants also marked the salary certificate as Ex.P8, however, the Tribunal fixed a sum of Rs.7,000/- per month as the salary of the deceased. Further the Tribunal instead of adopting multiplier 17 wrongly adopted the multiplier 14 and awarded a meagre



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sum as compensation. The Tribunal has also not awarded any amount towards future prospects. Hence, the appellants are entitled for enhanced compensation.

6.The learned counsel appearing for the second respondent Insurance Company submitted that at the time of accident, the deceased was travelling along with two others in a motor cycle, in violation of the Motor Vehicles Act. Thereby, the Tribunal arrived at the conclusion that there was negligence on the part of the deceased. The Tribunal has elaborately discussed and made clear that the deceased along with two pillion riders came from South to North and dashed against the lorry owned by the first respondent insured with the second respondent and fixed 50% contributory negligence on the part of the deceased, which warrants no interference. However, the learned counsel fairly submitted that the correct multiplier to be adopted is multiplier 17.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent and perused the materials available on record.



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8. On 07.10.2007 at about 04.00 p.m., the deceased Dhanapal was riding in a motor cycle along with two pillion riders from South to North in Namakkal to Salem Main Road, near Karaikurichi Four Road. At that time the driver of the lorry owned by the first respondent came from the Eastern direction and dashed against the motor cycle, due to which, the deceased died on the spot. F.I.R. was registered against the driver of the lorry owned by the first respondent and charge sheet was also filed and the same were marked as Ex.P1 and Ex.P5 respectively. The Motor Vehicles report of the motor cycle was marked as Ex.P4 and the Motor Vehicles report of the lorry was marked as Ex.P3. It is also undisputed fact that no eye witness has been examined to substantiate that the accident happened due to the negligence of the deceased. Merely because the deceased was riding in the motor cycle along with two pillion riders, in violation of the Motor Vehicles Act, it would not amount to contributory negligence leading to accident.

9. Similar issue was considered by the Hon'ble Apex Court in its decision reported in **2020 (1) TNMAC 161 (SC) [Mohammed Siddhque and another Vs. National Insurance Co. Ltd. and others]** and the Hon'ble Apex Court held that riding of triples in two



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wheeler, of course violative of Section 128 of Motor Vehicles Act and Section 194-C (as inserted by 2019 Act) prescribes for penalty for such violation, the same by itself would not lead to finding of contributory negligence. The decision makes it clear that in the absence of any evidence that wrongful act on the part of the deceased contributed to accident, victim/ deceased cannot be held guilty of contributory negligence.

10.In the present case, without any evidence, the Tribunal has fixed 50% contributory negligence on the part of the deceased, which is not sustainable one. Hence, the 50% contributory negligence fixed on the part of the deceased is set aside.

11.Insofar as the quantum of compensation is concerned, the tribunal after elaborately discussing the factual aspects awarded a sum of Rs.5,88,000/- for loss of income, Rs.5,000/- for funeral expenses, Rs.10,000/- for transportation charges, Rs.50,000/- each for love and affection and arrived at a total compensation of Rs.7,03,000/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.



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12.The deceased was aged 26 years at the time of death.

Hence, the correct multiplier to be adopted is 17. This Court is of the opinion that the Tribunal has rightly fixed the monthly salary as Rs.7,000/- and has rightly deducted 1/2 towards personal expenses. Hence, by adopting the multiplier 17, the actual loss of income works out to Rs.7,14,000/- [Rs.3,500/- X 12 X 17 = Rs.7,14,000/-]. This Court is of the opinion that some amount has to be awarded for future prospects and for loss of estate. Accordingly, this Court awards 40% of actual loss of income for future prospects, which comes to Rs.2,85,600/- [40% of Rs.7,14,000/- = Rs.2,85,600/-] and a sum of Rs.15,000/- for loss of estate. The amount awarded under the head funeral expenses is low and this Court is inclined to enhance the amount awarded under the said head. Accordingly, the amount awarded for funeral expenses is enhanced to Rs.15,000/- from Rs.5,000/-. However, the amount awarded for transportation charges and love and affection, in the opinion of this Court is on higher side and hence this Court is inclined to reduce the amount awarded under the said heads. Accordingly, the amount awarded for transportation charges is reduced to Rs.5,000/- from Rs.10,000/- and the amount awarded for love and affection is reduced to Rs.80,000/- [Rs.40,000/- each] from Rs.1 Lakh.



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13. Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of income	Rs.5,88,000/-	Rs.7,14,000/-
2.	Funeral Expenses	Rs. 5,000/-	Rs. 15,000/-
3.	Love and affection	Rs.1,00,000/-	Rs. 80,000/-
4.	Transportation charges	Rs. 10,000/-	Rs. 5,000/-
5.	Future prospects	---	Rs.2,85,600/-
6.	Loss of estate	---	Rs. 15,000/-
	Total	Rs.7,03,000/-	Rs.11,14,600/-

14. The claimants are entitled to total compensation of Rs.11,14,600/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

15. The civil miscellaneous appeal is allowed. The judgment and decree passed in M.C.O.P.No.479 of 2008 dated 05.01.2012 by the Motor Accidents Claims Tribunal / Sub Court, Rasipuram, is modified to the above extent.

16. The second respondent Insurance Company is directed to deposit the modified/ enhanced award amount before the Tribunal



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within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the appellants/ claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The appellants/ claimants shall not be entitled to any interest for the period of delay, if any, in filing the appeals. The appellants/ claimants are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Motor Accidents Claims Tribunal / Sub Court, Rasipuram, shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the appellants/ claimants.

17.The civil miscellaneous appeal is allowed. No costs.

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1.The Motor Accidents Claims Tribunal / Sub Court, Rasipuram.

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