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C.M.A.Nos.1943 of 2023 & 2910 of 2022
and C.M.P.No.18863 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.Nos.1943 of 2023 & 2910 of 2022
and C.M.P.No.18863 of 2023

C.M.A. No. 1943 of 2023:

Dy. C.M.M.
Shell Depot,
I.C.F. Chennai – 600 038.

... Appellant

Versus

1.Josephine
2.N.Murali,

... Respondents

PRAYER : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 25.08.2022 passed by the Motor Accidents Claims Tribunal, (Special Sub Court No.1, Small Causes Court, Chennai in M.C.O.P.No.2040 of 2017)



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For Appellant : Mr.A.R.Sakthivel
For Respondents : R1 - M/s.K.Varadha Kamaraj
R2 – Notice not ready

C.M.A. No. 2910 of 2022:

Josephine

... Appellant

Versus

1.Dy. C.M.M.
Shell Depot,
I.C.F. Chennai – 600 038.

2.N.Murali

...Respondents

PRAYER : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and Judgment dated 25.08.2022 made in M.C.O.P.No.2040 of 2017 on the file of Motor Accidents Claims Tribunal (Small Causes Court, Special Sub Court No.1), Chennai.

For Appellant : Mr. K.Varadha Kamaraj
For Respondents : R1 – Mr.A.R.Sakthivel
R2 – Notice not ready



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COMMON JUDGMENT

(Both these appeals arise out of the same award and hence these appeals are disposed of by this Common Judgment. For the sake of convenience, parties are referred to as per their rank in the claim petition.)

C.M.A.No.1943 of 2023 has been filed by the owner of the mini lorry/Dy.C.M.M, Shell Depot, challenging the liability as well as the quantum of compensation awarded by the Tribunal.

2. C.M.A.No.2910 of 2022 has been filed by the claimant/mother of the deceased seeking enhancement of the compensation awarded by the Tribunal.

3. The claimant filed the petition seeking compensation stating that on 26.09.2016, at about 10.50 hours, while the deceased Mr.Vijay was riding a motorcycle bearing Reg.No.TN 05 AS 7628 on a public road, a Mini Lorry bearing Reg.No.TN 05 AB 2764 belonging to the ICF, came in a rash and negligent manner and dashed against the two wheeler of the deceased, as a result of which, the deceased sustained fatal injuries.



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4. The DY.C.M.M/ICF, resisted the claim petition and stated that the accident took place only on account of the negligence of the rider of the two wheeler; that they were not liable to pay compensation to the claimant; and that in any case, the claim made by the claimant is excessive and prayed for dismissal of the claim petition.

5. The second respondent in both the appeals/driver of the offending vehicle, remained ex-parte before the Tribunal.

6. The claimant examined two witnesses as P.W.1 and P.W.2 and marked seven documents as Exs.P1 to P7. The first respondent examined R.W.1 and marked three documents as Exs.R1 to R3.

7. The Tribunal after considering the oral and documentary evidence held that the accident occurred due to rash and negligent driving of the driver of the mini lorry as well the deceased, fixed 90% on the driver of the mini lorry and 10% on the deceased and directed the first respondent to pay a compensation of Rs.14,23,800/- to the claimant, since the vehicle was not insured with any Insurance Company.



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8. The learned counsel for the first respondent/owner of the offending vehicle submitted that the Tribunal having found that the deceased was a minor who did not have a valid driving license at the time of the accident ought to have fixed a higher contributory negligence, instead of 10%. The learned counsel for the first respondent further submitted that monthly notional income fixed on the deceased at Rs.10,000/- is on the higher side and prayed for the reduction of compensation.

9. The learned counsel for the claimant submitted that the Tribunal ought not to have fixed 10% negligence on the deceased since the accident took place entirely due to the fault of the driver of the offending vehicle. The learned counsel relied upon the Judgment of this Court in ***Tamil Nadu State Transport Corporation Ltd., Vs. Vasantha*** reported in **2022 (2) TN MAC 289** in support of his submission. The learned counsel further submitted that the notional income fixed by the Tribunal was also meagre and prayed for enhancement of compensation.



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10. Since the second respondent in both the appeals remained *exparte* before the Tribunal, the learned counsel for the claimant submitted that notice to the second respondent may be dispensed with. Accordingly notice to the second respondent was dispensed with vide this Court order dated 09.08.2023 in C.M.P.No.17858 of 2023 in C.M.A.SR.No.81930 of 2023.

11. Heard the learned counsel for the claimant as well as the first respondent and perused the materials available on record.

12. This Court finds that admittedly the deceased was a minor who did not have a valid driving license at the time of the accident. This Court in a decision reported in **2022 (2) TN MAC 289 (Tamil Nadu State Transport Corporation Ltd., Vs. Vasantha)** on facts held that merely because the deceased was a minor and he did not have a valid driving license, negligence cannot be attributed automatically. The fixation of contributory negligence would depend on facts and circumstances of each case. In the instant case, this Court finds that the deceased was a minor and admittedly did not have a valid driving license. The driver of the offending vehicle had



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come from behind and rammed into the two-wheeler of the deceased.

This Court in several cases had fixed 20% contributory negligence in the case of an adult driving/riding without valid license and for not wearing helmet. There is no evidence let in on either side regarding whether the deceased wore a helmet at the time of the accident or not. However, the deceased, a minor, was not entitled to ride a two-wheeler without license. Considering the view taken by this Court in several cases that contributory negligence can be fixed for the said statutory violation, this Court is of the view in the facts that 20% contributory negligence can be fixed on the deceased for the violation committed by him.

13. As regards compensation, this Court is of the view that the Tribunal had correctly fixed the notional income and awarded compensation and there is no reason to interfere with the same. Hence, the same is confirmed.

14. Since 20% contributory negligence is fixed on the rider of the two wheeler/deceased, the first respondent is directed to deposit 80% of the



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compensation. Thus, the compensation awarded by the Tribunal is reduced from Rs.14,23,800/- to Rs.12,65,600/-.

S. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Total Loss of Dependency	15,12,000/-	15,12,000/-	Confirmed
2.	Loss of Consortium	40,000/-	40,000/-	Confirmed
3.	Loss of Estate	15,000/-	15,000/-	Confirmed
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total	15,82,000/-	15,82,000/-	
		Less : 10% contributory negligence Rs.1,58,200/-	Less : 20% contributory negligence Rs.3,16,400/-	
	Net Compensation payable to claimant	Rs.14,23,800/-	Rs.12,65,600/-	Reduced by Rs.1,58,200/-



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In the result:

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(i) CMA No.1943 of 2023 is partly allowed by fixing 20% contributory negligence on the deceased and reducing the compensation awarded by the Tribunal from Rs.14,23,800/- to Rs.12,65,600/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit..

(ii) CMA No.2910 of 2022 is dismissed.

(iii) The first respondent/owner of the offending vehicle 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 four (4) weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimant is permitted to withdraw the award amount, with interest and costs, less the amount if any, already withdrawn. The 1st respondent is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.2040 of 2017, if the entire award amount



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has already been deposited by him. No costs. Consequently, the connected miscellaneous petition is closed.

25.08.2023

Index : Yes/No
NCC: Yes/No
dk

To

1.The Special Sub Court No.1, Small Causes Court, Chennai.

2.The Section Officer

VR Section

High Court of Madras.



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SUNDER MOHAN, J.

dk

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