



C.M.A.No.57 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.57 of 2021

Dhanalakshmi

.. Appellant

Vs.

1.Sakthivel

(R1 remained exparte before Tribunal.
Hence, notice to 1st respondent is
dispensed with)

2.M/s.National Insurance Co.Ltd.,
Divisional Office,
73, Perundurai Road,
Palayapalayam, Erode – 638 011.

3.M/s.National Insurance Co.Ltd.,
Branch Office, 19-B, S.R.Complex,
RajamaniThottam, Bhavani Main Road,
Sankari Taluk,
Salem District – 637 301.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 01.10.2020 made in M.C.O.P.No.556 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode.



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For Appellants : Mr.M.Guruprasad
For RR 2 & 3 : Mr.J.Chandran

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J U D G M E N T

The mother of the deceased one Arasu, has preferred this Civil Miscellaneous Appeal against the Judgment and Decree dated 01.10.2020 made in M.C.O.P.No.556 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode, for enhancement of compensation.

2.The claim petition was filed under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.30,00,000/- for the death of one Arasu, who died in the road accident that had taken place on 13.03.2018.

3.The Tribunal after hearing both side evidence and upon perusing the oral and documentary evidence, has awarded compensation for a sum of Rs.18,84,400/- and directed the 3rd respondent – Insurance Company to pay 50% of the compensation amount i.e., Rs.9,42,200/- to the appellant and dismissed the claim



petition as against the 2nd respondent – Insurance Company.

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4.The learned counsel for the appellant / claimant would vehemently contend that though P.W.2 - eyewitness has clearly stated that the accident has occurred only due to the negligence of the driver of the lorry belonging to 1st respondent, the Tribunal erroneously fixed 50% contributory negligence on the part of the deceased. The Tribunal ought to have accepted the evidence of P.W.2 – eyewitness and fixed entire negligence on the driver of the lorry. The monthly income fixed by the Tribunal at Rs.12,000/- is on the lower side and it needs enhancement as the appellant marked Ex.P17 – salary certificate of the deceased, as per the same, the deceased was earning a sum of Rs.16,000/- per month. The compensation granted under other heads also appears to be on the lower side and prayed to fix 100% negligence on the driver of the lorry and for enhancement of compensation.

5. Per contra, the learned counsel for the respondents 2 and 3 would contend that only the deceased drove the motorcycle in a rash



and negligent manner, dashed on the lorry and invited the accident and therefore, the Tribunal ought to have fixed entire negligence on the deceased instead of fixing only 50% negligence. The monthly income fixed by the Tribunal at Rs.12,000/- is not on the lower side and it appears to be reasonable. The amounts awarded under other heads are not meagre and prayed for dismissal of the appeal.

6. Heard the learned counsel for appellants and the learned counsel for respondents 2 and 3 and perused the entire materials on record.

7. According to the claimant, on 13.03.2018 at about 03.45 P.M., while the deceased Arasu was riding the motorcycle bearing Registration No.TN 34 W 2111 along the Coimbatore – Salem road and when he stopped at the center median to proceed towards Salem at Kottaimedu bypass road junction, the lorry bearing Registration No.TN 34 J 8634, came from Komarapalayam and dashed against the motorcycle and caused the accident. In the accident, the said Arasu sustained fatal injuries and died in the



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Government Hospital, Erode is not in dispute.

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8. On the other hand, it is the case of the respondents 2 & 3 that on the date of accident, when the deceased came from East to North and came to center median and tried to cross the East – West road suddenly without noticing the vehicle coming from opposite direction and invited the accident. The driver of the lorry came from North and turned to East after giving signal to enter the Salem road. Hence, the deceased is only responsible for the accident.

9. From Ex.P7 – rough sketch, it is seen that the accident has occurred on the left side of the East-West. Therefore, as per Ex.P7, it is seen that the lorry that was coming from North turned towards East and the motorcycle that was coming from South to North turned towards East. Therefore, the rider of the motorcycle ought to have seen the lorry which was turning towards East while he was also turning towards East. The fact that the rider of the motorcycle hit at the diesel tank of the lorry indicates that he was also at fault. The Tribunal considering the said fact has rightly fixed 50% negligence each on the



part of the driver of the lorry as well as the deceased. I find no reason to interfere with the said finding of the Tribunal.

10. As regards monthly income of the deceased, the claimants claimed that the deceased was working as Fitter in Power Loom Unit in M/s.VPG Tex., Veerappampalayam and he is an Agriculturist and earning a sum of Rs.18,000/- per month. The salary certificate of the deceased is marked as Ex.P17. To prove the same, the proprietor of M/s.VPG Tex, Veerappampalayam was examined as P.W.3. P.W.3 in his cross examination has accepted that Ex.P17 – salary certificate of the deceased was typed in the letter pad and he also accepted that except Ex.P17, there is no document available with him to prove that the deceased was employed under him. In his cross examination he has stated that he has not filed the salary register and the attendance register. Therefore, this Court deems fit to fix the income of the deceased at Rs.14,000/- per month.

11. As regards Future Prospects, the Hon'ble Supreme Court has standardized the details in ***National Insurance Co. Ltd., Vs. Pranay Sethi and others***, reported in ***[2017 (2) TN MAC 609 (SC)]***, in



respect of person who is self-employed or on fixed salary if the age below 40 years, 40% to be added while computing the monthly income of the deceased. With regard to deduction of personal and living expenses, the Hon'ble Supreme Court in **Smt.Sarla Verma & others Vs. Delhi Transport Corporation & another**, reported in **[2009 (2) TNMAC 1 SC]**, has held that if the deceased is a bachelor and left a widowed mother, then 1/3rd is to be deducted and as per the said judgment, for the age group of persons between 21 to 25, the proper multiplier is 18. Based on the above said details, the loss of dependency is arrived at :

Age of the deceased : 25 years

Income fixed : Rs.14,000/- per month

After adding 40%
Future Prospects : Rs.14,000/- + 40% = Rs.19,600/-

After 1/3rd deduction
From Rs.19,600/- : Rs.13,067/-

Loss of Dependency : Rs.13,067/- X 12 X 18

Rs.28,22,472/-.

In all other aspects, the amounts awarded by the Tribunal appears to be reasonable and hence, the same needs no interference.



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Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:

S.No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Loss of Dependency	Rs. 18,14,400/-	Rs.28,22,472/-	Enhanced
2	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
3	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-	Confirmed
4	Filial Consortium	Rs. 40,000/-	Rs. 40,000/-	Confirmed
	Total	Rs.18,84,400/-	Rs.28,92,472/-	
	Less 50% Contributory Negligence	Rs.9,42,200/-	Rs.14,46,236/-	

12. Thus, the compensation awarded by the Tribunal is enhanced from Rs.9,42,200/- to Rs.14,46,236/- which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

13. In the result,



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(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.9,42,200/- to Rs.14,46,236/-.

(iii) The 3rd respondent-Insurance Company is directed to deposit 50% of the award amount i.e., Rs.14,46,236/- along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.556 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode.

(iv) On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn by making necessary cheque applications before the Tribunal. This Civil Miscellaneous Appeal is dismissed as against the 2nd respondent. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

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krk/ssn
Index : Yes / No



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Internet : Yes / No

Neutral Citation : Yes / No

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To

1.The Special District Judge,
Motor Accidents Claims Tribunal,
Erode.

2.The Section Officer,
VR Section,
High Court,
Madras.

R.KALAIMATHI, J.

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