IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.Nos.2501 & 2502 of 2022

1.Arjunan
2.Anandharaj
3.Sreemathi ... Appellants in C.M.A.No.2501 of 2022

Arjunan ... Appellant in C.M.A.No.2502 of 2022

Vs

1.Duraisamy
2.Elango
3.The Manager,
United India Insurance Company Limited,
No.3, Giriram Buildings Main Road,
Gobichettipalayam. ... Respondents in both C.M.As

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, against the common judgment and decree dated 16.11.2021 made in M.C.O.P.Nos.233 & 237 of 2019 on the file of the Motor Accident Claims Tribunal, IV Additional District and Sessions Judge, Bhavani.

In both C.M.As.

For appellants : Mr.M.Lokesh

For R2 : Ms.I.Malar for R3

COMMON JUDGMENT

Since both the appeals arise out of the same accident and common award, they are disposed of by this common judgment.

2.These appeals have been filed by the claimants seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, IV Additional District and Sessions Judge, Bhavani, in M.C.O.P.Nos.233 & 237 of 2019.

3. The appellants filed M.C.O.P.Nos.233 & 237 of 2019 on the file of the Motor Accident Claims Tribunal, IV Additional District and Sessions Judge, Bhavani, claiming compensation for the injuries sustained by the appellant in C.M.A.No.2502 of 2022 and for the death of one Ruckmani, the wife of the first appellant in C.M.A.No.2501 of 2022 who died in the accident that took place on 26.04.2019.

4.According to the appellants, on 26.04.2019 at about 03.00 p.m., while the appellant in C.M.A.No.2502 of 2022 was riding his two wheeler along with his wife, the deceased Ruckmani in C.M.A.No.2501 of 2022 on a public road, the driver of the lorry belonging to the second respondent, insured with the third respondent, came in a rash and negligent manner and hit behind the two wheeler and caused the accident; and as a result of which, the deceased Ruckmani sustained fatal injuries and the appellant in C.M.A.No.2502 of 2022 sustained grievous injuries.

5. The respondents 1 and 2, who are the driver and owner of the offending vehicle, remained ex-parte before the Tribunal.

6. The third respondent filed a counter stating that the accident did not take place due to the negligence of the offending vehicle and in any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petitions.

7.Before the Tribunal, the appellants examined three witnesses as P.W.1 to P.W.3 and marked 32 documents as Exs.P1 to P32. The third respondent/Insurance Company did not let in any oral and documentary evidence.

8. The Tribunal considering the pleadings, oral and documentary

evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the second respondent, fixed 85% negligence on the part of the driver of the second respondent and 15% negligence on the part of the deceased as well as the appellant in C.M.A.No.2502 of 2022 for not possessing valid driving license, awarded a sum of Rs.11,45,600/- as compensation to the appellants in C.M.A.No.2501 of 2022 and a sum of Rs.6,42,350/- as compensation to the appellant in C.M.A.No.2502 of 2022. The Tribunal had directed the third respondent/Insurance Company being insurer of the said lorry to pay a sum of Rs.9,73,760/- i.e. 85% of the award amount as compensation to the appellants in C.M.A.No.2501 of 2022 and to pay a sum of Rs.5,45,997/- i.e. 85% of the award amount as compensation to the appellant in C.M.A.No.2502 of 2022.

9. The appellants have come out with these appeals challenging the portion of the award fixing 15% contributory negligence on the part of the deceased and the appellant in C.M.A.No.2502 of 2022 as well as for enhancement of compensation.

10. The learned counsel for the appellants submitted that the

Tribunal had erroneously deducted 15% contributory negligence even for the deceased who was a pillion rider on the ground that the rider of the two wheeler did not have valid driving license at the time of accident. The learned counsel further submitted that the notional income of the deceased fixed by the Tribunal is meagre. As regards the injured/appellant in C.M.A.No.2502 of 2023, the learned counsel submitted that the notional income fixed by the Tribunal is very meagre and also not awarded any amount towards attendent charges. Hence, he prayed for enhancement of compensation in both the appeals.

11. The respondents 1 and 2 remained ex parte before the Tribunal and hence, the learned counsel for the appellants submitted that notice to the respondents 1 and 2 may be dispensed with and he has also made an endorsement to that effect. Hence, notice to R1 and R2 is dispensed with.

12. Per contra, the learned counsel for the third respondent submitted that the appellant in C.M.A.No.2502 of 2022 rode the two wheeler at high speed without wearing helmet and was solely responsible for the accident. The learned counsel further submitted that the appellants had not established the avocation and income of the deceased or injured

before the Tribunal. In such circumstances, the Tribunal was right in fixing the notional income and hence, no interference is called for. Therefore, he prayed for dismissal of both the appeals.

13. The questions involved in both the appeals are-

i) Whether the Tribunal was right in fixing 15% contributory negligence on the appellant in the C.M.A.No.2502 of 2022 and on the deceased concerned in C.M.A.No.2501 of 2022?

ii) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

14.On perusal of the records, it is seen that the Tribunal has fixed 15% contributory negligence on the rider of the two wheeler for not possessing valid driving license. Considering the nature of accident, this Court is of the view that the accident took place entirely due to negligence of the driver of the lorry, insured with the third respondent. Since the rider did not have valid driving license, this Court is of the view that it would be just and reasonable to fix 10% contributory negligence on the rider of the two wheeler/appellant in C.M.A.No.2502 of 2022. However, the finding of the Tribunal that the compensation payable for the death of the deceased Ruckmani is liable for deduction on account of contributory negligence is erroneous. The deceased cannot be held liable for any contributory negligence. Therefore, the third respondent is liable to pay entire compensation determined insofar as the deceased Ruckmani is concerned.

15.C.M.A.No.2501 of 2022:

On perusal of the records, it is seen that the appellants had established that the deceased was doing saree business through the evidence of P.W.1, the husband of the deceased. He has also marked Exs.P23 to P26, the income tax returns of the deceased for the assessment years 2008-09 to 2011-12. As per Ex.P26, the income tax return filed by the deceased for the assessment year 2011-12, the gross total income is Rs.2,01,390/-. It is seen from Exs.P23 to P26, the income tax return pertains to the years from 2008 to 2012. However, no document has been filed to prove the income earned by the deceased at the time of accident. The Tribunal considered the age of the deceased to be between 52 and 55. The Postmortem Report states that the deceased was aged 52 years. Hence, the said age is taken into consideration for computing compensation. Considering the age of the deceased, her avocation and the year of accident, this Court is of the view that it would be just and reasonable to fix the notional income as Rs.15,000/- per month. The appellants would be entitled to 10% enhancement towards future prospects. By applying multiplier '11' and deducting 1/3rd towards personal expenses of the deceased, the award of compensation under the head loss of dependency is modified as:

Rs.15,000/- + 1,500/- [Rs.15,000/- X 10%] X 12 X 11 X 2/3 = Rs.14,52,000/-.

The amount awarded by the Tribunal under the head loss of love and affection is excessive and hence, the same is reduced to Rs.80,000/-. The compensation awarded under the other heads are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No	**Description**	**Amount awarded by Tribunal (Rs)**	**Amount awarded by this Court (Rs)**	**Award confirmed or enhanced or granted**
1.	Loss of Dependency	9,68,100/-	14,52,000/-	Enhanced
2.	Loss of parental consortium to the petitioners 1 and 2	1,00,000/-	80,000/-	Reduced

3.	Loss of spousal consortium to 1st petitioner	40,000/-	40,000/-	Confirmed
4.	Loss of estate, Funeral expenses	30,000/-	30,000/-	Confirmed
5.	Transportation	7,500/-	7,500/-	Confirmed
	Total	**11,45,600/-**	**16,09,500/-**	**Enhanced by Rs.4,63,900/-**

16.C.M.A.No.2502 of 2022:

On perusal of the records, it is seen that the appellant has taken treatment as in-patient in two different spells from 26.04.2023 to 29.04.2023 and from 29.04.2023 to 13.05.2019. But, the Tribunal has not awarded any amount under the head attendant charges. Considering the period of treatment, this Court is of the view that the appellant would be entitled to Rs.10,000/- towards attendant charges. Further, the notional income determined by the Tribunal for commuting loss of earning at Rs.9,000/- is meagre. Considering the fact that the appellant was owned a dyeing factory, this Court is of the view that it would be just and reasonable to fix the notional income as Rs.17,000/- per month for the appellant. Therefore, loss of earning for a period of five months determined by the Tribunal is enhanced to Rs.85,000/- (Rs.17,000/- x 5). The compensation awarded under the other heads is just and reasonable and the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and suffering	60,000/-	60,000/-	Confirmed
2.	Loss of earning	45,000/-	85,000/-	Enhanced
3.	Disability	1,00,000/-	1,00,000/-	Confirmed
4.	Medical Bills	4,19,850/-	4,19,850/-	Confirmed
5.	Transportation	7,500/-	7,500/-	Confirmed
6.	Extra nourishment	7,000/-	7,000/-	Confirmed
7.	Damage to clothing and articles	3,000/-	3,000/-	Confirmed
8.	Attendant charges	-	10,000/-	Granted
	Total Less contributory negligence Net compensation Payable	**6,42,350/-** **96,353/-** (@15%) **5,45,997/-**	**6,82,350/-** **69,235/-** **(@10)** **6,23,115/-**	**Enhanced by Rs.77,118/-**

17. In the result

(i) C.M.A.No.2501 of 2022 is partly allowed and the compensation awarded by the Tribunal at Rs.11,45,600/- is hereby enhanced to Rs.16,09,500/- together with interest at 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 Court fee, if any, on the enhanced compensation. The third respondent/Insurance Company 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 six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective share of the award amount now determined by this Court as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

(ii)C.M.A.No.2502 of 2022 is partly allowed and the compensation awarded by the Tribunal at Rs.6,42,350/- is hereby enhanced to Rs.6,82,350/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The third respondent/Insurance Company is directed to deposit 90% of the award amount now determined by this Court i.e., Rs.6,23,115/- 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 appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. No costs.

22.09.2023

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Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To:

1.The Motor Vehicle Accident Tribunal,
IV Additional District and Sessions Judge,
Bhavani.

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

SUNDER MOHAN, J.

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C.M.A.Nos.2501 & 2502 of 2022

22.09.2023