



C.M.A.No.1437 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1437 of 2023

1.Usha Rani

2.Gandhi

...Appellants

Versus

1.Mahadevan

2.Chinnpaiyan

2.The United India Insurance Company,

Represented by its Branch Manager,

Vellore, Having Office at K.B.S. Motors Building,

No. 36, Katpadi Road, Gandhi Nagar,

Vellore – 632 006.

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.03.2022 in M.C.O.P.No.474 of 2019 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Vellore.



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For Appellants : Mr.C.Prabakaran

For Respondents : Mr. M.B.Raghavan for R3

: No Appearance for R1 & R2

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the portion of the award fixed at 25% contributory negligence on the part of the deceased and for enhancement of compensation awarded by the Tribunal, dated 11.03.2022 made in M.C.O.P.No.474 of 2019 on the file of Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Vellore.

2. The appellants are the claimants in M.C.O.P.No.474 of 2019 on the file of Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Vellore. They filed the Claim Petition claiming a sum of Rs.80,00,000/- as compensation for the death of A.Sumathi, in the accident that took place on 03.04.2019.

3. According to the appellants, on 03.04.2019 at about 10.30 a.m., while the deceased was riding her three-wheeler bearing Registration



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No.TN-23-AK-3637 from Katpadi, the driver of the lorry bearing Registration No. TN-25-AQ-7130 belonging to the 2nd respondent, drove the lorry which came in the opposite direction in a rash and negligent manner without observing the Traffic Rules and dashed against the three-wheeler of the deceased. Due to the impact, the deceased suffered injuries and succumbed to death. The deceased, who was aged about 41 years, was working as an Assistant, Animal Husbandry, Tharapadavedu Veterinary Hospital; and was the sole bread winner of her family and hence, the respondents 1 to 3 are liable to pay Rs.80,00,000/- as compensation.

4. The first respondent filed a counter, denying all the averments made in the claim petition and submitted that the lorry was duly insured with the 3rd respondent. He further submitted that the first respondent drove the vehicle observing the Traffic Rules and that the accident did not happen due the rash and negligent act of the first respondent.



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5. The second respondent, who is the owner of the lorry, remained *ex-parte* before the Tribunal.

6. The third respondent/Insurance Company filed counter statement, denying all the averments made in the Claim Petition and stated that the accident was not due to the rash and negligent driving of the driver of the lorry bearing registration No.TN-25-AQ-7130; that the first respondent did not possess a valid driving license, that the deceased did not wear helmet at the time of accident and; that since the accident did not take place in the manner alleged by the claimants, they are not entitled to compensation.

7. Before the Tribunal, the appellants examined P.W.1 to P.W.3 and Exs.P1 to P22 were marked on the side of the appellants. The 3rd respondent/ Insurance Company did not let-in any oral and documentary evidence.



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8. The Tribunal considering the pleadings, oral and documentary evidence, held that the deceased died only due to rash and negligent, act of the driver of the second respondent's vehicle and directed the third respondent being the insurer of the vehicle to pay a sum of Rs.27,66,536/- as compensation to the appellants.

9. The learned counsel for the appellants submitted that the deceased was physically challenged and had converted her two wheeler into a three wheeler. Though, the claimants had not produced any valid driving license and had admitted that the deceased did not wear a helmet, the contributory negligence fixed at 25% is excessive. The learned counsel further submitted that since the deceased converted her two wheeler into a three-wheeler as she was physically challenged, there was no necessity to wear helmet and prayed for reduction of the percentage of the contributory negligence fixed on the deceased.

10. Per contra, the learned counsel for the third respondent/Insurance Company submitted that admittedly the deceased did



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not possess any valid license and also did not wear helmet at the time of accident and hence, there is no necessity to interfere with the award passed by the Tribunal. Hence, he prayed for dismissal of the appeal.

11. Though notice was served on the first and second respondents, none had entered appearance on their behalf before this Court.

12. Heard the learned counsel for the appellants and the learned counsel for the third respondent/ Insurance Company and perused the materials/ documents available on record before this Court.

13. This Court on perusal of the award passed by the Tribunal and upon hearing the submissions made by the learned counsels on either side, finds that there is no dispute with regard to quantum of compensation awarded by the Tribunal. The only question is whether, the Tribunal has rightly fixed the contributory negligence on the part of the deceased.



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14. Considering the fact that the two wheeler was converted into three wheeler and the deceased was a physically challenged person, this Court is of the view that contributory negligence cannot be fixed in the same manner as fixed for a two-wheeler rider without helmet and licence. Admittedly there was no license for the deceased. The deceased did not wear a helmet. Taking into consideration the overall facts and circumstances, the manner in which the accident took place, this Court is of the view that contributory negligence can be fixed as 15% on the deceased for the admitted violations. 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 or reduced
1.	Loss of Income	26,71,536	26,71,536	Confirmed
2.	Loss of filial consortium	40,000	40,000	Confirmed
3.	Loss of love and affection (for 2 nd	20,000	20,000	Confirmed



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	petitioner)			
4.	Funeral Expenses	15,000	15,000	Confirmed
5.	Transport Expenses	5,000	5,000	Confirmed
6.	Loss of estate	15,000	15,000	Confirmed
	Total	27,66,536	27,66,536	
	Deducted at 25% for contributory negligence	6,91,634	4,14,980 [Deducted at 15% for Contributory Negligence]	Reduced
	Grand Total	20,74,902	23,51,556	Enhanced a sum of Rs.2,76,654/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed by fixing the contributory negligence of 15% on the part of the deceased. The Insurance Company/ third respondent is liable to pay 85% of the above amount i.e., 23,51,556/-. The third respondent/Insurance Company as the insurer of the 2nd respondent's vehicle is directed to deposit the award amount 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



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respective shares of the award amount along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The other directions issued by the Tribunal remains the same. No costs.

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Index: Yes/No

Internet: Yes/No

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To

1.The Motor Accident Claims Tribunal,
I- Additional District and Sessions Judge,
Vellore.

2.The Section Officer
VR Section, High Court of Madras
Chennai – 600 104.



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SUNDER MOHAN,J.

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