



WEB COPY



C.M.A.No.1571 of 2022
and C.M.P.No.11621 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1571 of 2022
and C.M.P.No.11621 of 2022

P.Premnath

... Appellant

Versus

1.Angammal
2.Jayalakshmi
3.Santhalakshmi
4.Muthamizh Selvi
5.Senthamizh Selvi
6.Pakkiri

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 12.11.2019 made in M.A.C.T.O.P.No.154 of 2018, on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Puducherry.

For Appellant : Mr.N.U.Pressanna

For R1 to R5 : Mr.D.Asok Kumar

For R6 : No Appearance



WEB COPY



C.M.A.No.1571 of 2022
and C.M.P.No.11621 of 2022

JUDGMENT

This appeal has been filed by the appellant/owner of the vehicle challenging the compensation awarded by the Tribunal in M.A.C.T.O.P.No.154 of 2018, dated 12.11.2019.

2.The claim petition was filed stating that on 26.10.2016, at about 18.40 hrs, when the 1st respondent's husband was walking on Pondy – Villupuram Main Road near Santhai Thoppu, Madagadipet, the rider of the motorcycle bearing Regn No.PY 01 BK 4467, rode the same in a rash and negligent manner, dashed against the 1st respondent's husband; that as a result, he sustained fatal injuries and hence, the appellants are entitled to compensation of Rs.12,00,000/-.

3.The appellant filed a counter denying all the averments made in the claim petition and stated that the deceased was walking on the road under the influence of alcohol and invited the accident; that the accident took place only due to the negligence of the deceased; that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.



C.M.A.No.1571 of 2022
and C.M.P.No.11621 of 2022

WEB COPY

4.Before the Tribunal, the respondents 1 to 5 examined three witnesses and marked Ex.P.1 to Ex.P.15 on their side. On behalf of the appellant and the 6th respondent, three witnesses were examined and Ex.R1 to R5 were marked.

5.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by the 6th respondent herein and since there was no valid insurance policy for the offending vehicle, directed the appellant to pay a sum of Rs.9,95,716/- as compensation to the respondents 1 to 5.

6.Aggrieved over the award passed by the Tribunal, the appellant filed the present appeal challenging the negligence as well as quantum of compensation.

7.The learned counsel for the appellant submitted that the award of the Tribunal is erroneous in as much as the Tribunal had not fixed any contributory negligence on the deceased although R.W.3-rider of the



C.M.A.No.1571 of 2022
and C.M.P.No.11621 of 2022

motorcycle, in his deposition has stated that the deceased smelt of alcohol. Further, the learned counsel submitted that there is no evidence to prove the avocation and income of the deceased and hence, the notional income of Rs.8,500/- per month fixed by the Tribunal is erroneous. The learned counsel therefore prayed for setting aside the award passed by the Tribunal.

8.The learned counsel for the respondents 1 to 5 submitted that the award of the Tribunal is just and reasonable and no interference is called for; that the deceased was pedestrian and there is no evidence to show that the accident happened due to his negligence; that there is also no evidence to show that the deceased was under the influence of alcohol. Hence, learned counsel prayed for dismissal of the appeal.

9.Though notice served on the 6th respondent and his name is printed in the cause list, none has entered appearance on his behalf.

10.The questions involved in the instant appeal are as follows:-

1) Whether the Tribunal was right in fixing the entire negligence



C.M.A.No.1571 of 2022
and C.M.P.No.11621 of 2022

on the rider of the motorcycle?

WEB COPY

2) Whether the compensation awarded by the Tribunal is just and reasonable?

11.As regards the first question, it is the submission of the learned counsel for the appellant that R.W.3 had deposed that the deceased smelt of alcohol. However, there is no evidence to show that the deceased was under the influence of alcohol. There is a vast difference between smell of alcohol and being under the influence of alcohol. The rider of the motorcycle, examined as R.W.1, had not explained the manner in which the accident took place in his deposition, except, stating that the deceased has also contributed to the accident. In the absence of any evidence to show that the deceased was under the influence of alcohol and he had also contributed to the accident, no contributory negligence can be fixed on the deceased. The Tribunal had elaborately discussed the evidence of the witnesses and fixed the negligence on the rider of the motorcycle. Hence, this Court is of the view that there is no ground to interfere with the said finding of the Tribunal.



C.M.A.No.1571 of 2022
and C.M.P.No.11621 of 2022

WEB COPY

12.As regards the second question - quantum of compensation, this Court finds that though the respondents 1 to 5 claimed that the deceased was earning a sum of Rs.750/- per day, no documentary evidence was produced to substantiate their claim. Therefore, the Tribunal fixed the notional income of the deceased at Rs.8,500/- per month. The accident took place in the year 2015. Considering the year of accident and avocation of the deceased, the notional income fixed by the Tribunal cannot be faulted. Hence, the compensation awarded under the head loss of income is just and reasonable and the same is confirmed. Similarly, the award under other heads are also just and reasonable. Thus, there is no merit in the instant appeal and the same is liable to be dismissed.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal is hereby confirmed, together with interest at 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of eight (8) weeks from the date of a receipt of copy of this



C.M.A.No.1571 of 2022
and C.M.P.No.11621 of 2022

Judgment. On such deposit, the respondents 1 to 5 are permitted to withdraw their respective share from the award amount, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount already withdrawn, if any. No costs. Consequently, connected miscellaneous petition is closed.

07.09.2023

rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

- 1.The Motor Vehicle Accident Tribunal,
III Additional District Judge, Puducherry.
- 2.The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



C.M.A.No.1571 of 2022
and C.M.P.No.11621 of 2022

SUNDER MOHAN, J.

rst

C.M.A.No.1571 of 2022
and C.M.P.No.11621 of 2022

07.09.2023