



C.M.A. No.1516 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1516 of 2022

S.Komala

...Appellant/Petitioner

Vs.

1.N.Sathish
(Since R1 remained
exparte before the
Tribunal his presence
may be dispensed with)

2.Reliance General Insurance Company Limited.,
RO Legal Department,
Reliance House,
6th Floor,
No.6, Haddows Road,
Nungambakkam,
Chennai.

...Respondents/Respondents



C.M.A. No.1516 of 2022

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.01.2019 and made in M.A.C.T.O.P.No.2964/2017 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellant : M/s.A.Subadra

For Respondents : R1 – Exparte
M/s.C.Bhuvana Sundari for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant challenging the quantum of compensation granted by the Tribunal in the award dated 03.01.2019 made in M.C.O.P.No.2964 of 2017 on the file of the Motor Accident Claims Tribunal/Chief Judge, Court of Small Causes, Chennai.

2.The appellant filed M.C.O.P. No.2964 of 2017 on the file of the Motor Accident Claims Tribunal/Chief Judge, Court of Small Causes, Chennai, claiming a sum of Rs.40,00,000/- as compensation for the death of one S.Saravanan, who died in the accident that took place on 23.01.2012.



C.M.A. No.1516 of 2022

3.The appellant/petitioner had filed the claim petition stating on 23.01.2012 at about 20.30 hours, that the deceased was riding his motorcycle bearing Reg.No.TN 20 BC 5754 from Thiruvallore to Uthukottai. At that time, the driver of the lorry bearing Reg.No. TN 20 BA 2277 belonging to the first respondent drove the same in a rash negligent manner and hit the motorcycle. As a result of which, the deceased sustained head injuries and succumbed to the injuries. Hence, the appellant filed claim petition claiming compensation against the respondents.

4.The first respondent remained ex-parte before the Tribunal.

5.The second respondent/Insurance Company filed counter denying their liability stating that the accident occurred due to rash and negligent act of the deceased. The deceased being the tort-feaser, the appellant is not liable to claim compensation. The second respondent has denied the age, dependency, legal heirship, occupation and income of the deceased. In any event, the compensation claim was excessive and prayed for dismissal of the claim petition.



C.M.A. No.1516 of 2022

6. Before the Tribunal, the appellant examined herself as PW1 and one Madhan Kumar, eyewitness to the accident was examined as PW2. Nineteen documents were marked as Exs.P.1 to Exs.P.19. Neither document was marked nor witness was examined on the side of the respondents.

7. The Tribunal on perusal of the pleadings and documents on record held that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the first respondent. Having held so, the Tribunal fixed 25% contributory negligence on the deceased since he did not wear helmet at the time of accident. The Tribunal therefore, awarded a compensation of Rs.14,39,654/- to the appellant after deducting 25% towards contributory negligence on the deceased. Aggrieved by the said order, the appellant has preferred the present appeal seeking enhancement of compensation.

8. The learned counsel for the appellant submitted that the finding of the Tribunal fixing negligence on the part of the deceased to the extent of



C.M.A. No.1516 of 2022

25% is without any basis. The Tribunal ought to have seen that the lorry belonging to the 1st respondent was not parked in a designated place and since there was no light at the time of the accident, the deceased cannot be said to have contributed to the accident. The learned counsel relied upon the Judgment of Hon'ble Apex Court in ***K.Anusha and others Vs. Regional Manager, Shriam General Insurance Co. Ltd.***, reported in ***CDJ 2021 SC 1185*** in support of her submission and submitted that unless it is shown that the deceased contributed to the accident, the contributory negligence cannot be fixed. The learned counsel also relied upon the Judgment of Hon'ble Apex Court in ***Anita Sharma and others Vs. The New India Assurance Company Limited & Another*** reported in ***CDJ 2020 SC 871*** in support of her submission stating that the accident can be established by preponderance of probability. The learned counsel therefore submitted that since the stationary lorry was parked in the wrong manner, the Tribunal ought not to have fixed contributory negligence on the deceased. The learned counsel further submitted that in any event since the evidence produced by the appellant would show that the deceased was aged 35 years at the time of the



C.M.A. No.1516 of 2022

occurrence, the multiplier ought to have been “16” as per the Judgment of

Sarla Verma Vs. Delhi Transport Corporation reported in **2009 (6) SCC 121**

whereas, the Tribunal erroneously assumed the age of the deceased as between 36 to 40 and applied multiplier “15” and thus prayed for enhancement of compensation.

9. The learned counsel for the 2nd respondent, per contra submitted that, it is not the case of the appellant that a stationary lorry was hit by the deceased. In the claim petition, the appellant had stated that the lorry belonging to the first respondent had overtaken the motorcycle and the left side door hit the motorcycle, as a result of which, the deceased fell down. In the FIR given by P.W.1, it is stated that the lorry which was going ahead of the motorcycle of the deceased had applied sudden brake which resulted in deceased hitting lorry. In the accident register, it is stated that the deceased had dashed against the stationary lorry. The learned counsel further submitted that in view of the contradictory versions, it cannot be said that the lorry of the first respondent was not parked in a designated place. Further, it is also seen that the deceased had suffered head injuries, suggesting that he did not



C.M.A. No.1516 of 2022

wear helmet at the time of accident. In view of the contradictory versions with regard to manner in which the accident took place and since the deceased had not produced the driving licence and in view of the head injuries suffered by the deceased, the Tribunal found that the deceased also contributed negligence to the accident and fixed 25% liability. The said finding is justified and there is no need to interfere in the said finding. The learned counsel further submitted that since the appellant did not produce any valid document to prove the age of the deceased, there is no infirmity in the order of the Tribunal in fixing the age of deceased as between 36 to 40 and applying multiplier 15 is appropriate. Thus, the learned counsel submitted that the compensation awarded by the Tribunal is just and reasonable and hence, prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellant as well as the second respondent and perused the materials available on record.



C.M.A. No.1516 of 2022

11. As rightly contended by the learned counsel for the second respondent, the appellant had given three different versions about the manner of the accident:-

(a) The first version is that while overtaking the motorcycle of the deceased, the left side door of the lorry hit the deceased.

(b) The second version in the FIR is that the lorry which was moving ahead of the vehicle of the deceased applied brake suddenly and thus the deceased dashed the lorry.

(c) The third version found in the accident register states that the deceased had hit the stationary lorry.

12. The Trial Court had taken into consideration, the version in the final report filed by the Police after investigation holding that the lorry had applied sudden brake due to which the accident had occurred. The Tribunal, after considering the said report found that the deceased did not maintain a safe distance while following the vehicle. The Tribunal also found that in view of the head injuries on the deceased, it is clear that the deceased did not



C.M.A. No.1516 of 2022

wear helmet. This finding of the Tribunal fixing contributory negligence on the deceased based on the above facts cannot be faulted. There is no infirmity in the said finding. The Judgments relied upon by the learned counsel for the appellant are not applicable to the facts of the instant case, as in those cases, the deceased had dashed against the stationary lorry which was not parked in the designated place. In the instant case, that fact has not been clearly established. From the facts and circumstances of the case, the contribution of the deceased to the accident cannot be ruled out. Considering the said fact and the violation committed by the deceased, this Court is of the view that the finding of the Tribunal fixing 25% contributory negligence on the deceased is justified.

13. As regards quantum, it is seen from the Exs.P.6 and Exs.P.10 which are the medical records and the earliest version namely the accident register/Ex.P4, that the deceased was aged 35 years at the time of accident. However, the Tribunal fixed the age of the deceased as between 36 to 40. In the absence of any contra evidence by the respondent, this Court is of the



C.M.A. No.1516 of 2022

view that Tribunal ought to have fixed the age of the deceased as 35 years and applied the multiplier “16”. The Tribunal has correctly taken future prospects and deduction for personal expenses. The notional income and the award of compensation under the other heads is just and reasonable. Hence, the compensation awarded by the Tribunal under the head loss of future dependency is calculated as follows:-

$$\text{Rs.10,000} + 4000(10000 \times 40\%) \times 12 \times 16 \times 2/3 = \text{Rs.17,92,000/-}$$

14. The compensation awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.,14,39,664/- to Rs.15,23,664/-, break-up 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 Future Dependency	16,80,000/-	17,92,000/-	Enhanced
2.	Loss of	40,000/-	40,000/-	Confirmed



C.M.A. No.1516 of 2022

	Consortium			
3.	Loss of Estate	15,000/-	15,000/-	Confirmed
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
5.	Medical Expenses	1,69,552/-	1,69,552/-	Confirmed
	Total	19,19,552/-	20,31,552/-	
	Less : 25 % Contributory Negligence	4,79,888/-	5,07,888/-	
	Grand Total	14,39,664/-	15,23,664/-	Enhanced by Rs.84,000/-

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,39,664/- is hereby enhanced to Rs.15,23,664/- 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 second 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 (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellant is permitted to withdraw the award amount,



C.M.A. No.1516 of 2022

now determined by this Court, along with interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

05.07.2023

dk

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Chief Judge,

12/14



C.M.A. No.1516 of 2022

Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.

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

SUNDER MOHAN, J

13/14



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C.M.A. No.1516 of 2022

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C.M.A. No. 1516 of 2022

05.07.2023

14/14