



WEB COPY



CMA No. 547/ 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.07.2023

Pronounced on : 25.07.2023

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 547 of 2023

E.Merina

... Appellant/Petitioner

Versus

1.Mohd.Ghouse Pasha

2.The New India Assurance Co.Ltd.,
Having its office at 202, II – floor,
Moghal Courts, Bashirabagh,
Hyderabad – 500 001.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 28.01.2022 made in MCOP.No.146 of 2012 on the file of MACT/III-Additional District Court at Coimbatore.

For Appellant : Mr. Ma.P.Thangavel

For Respondents : R1 Exparte,
Mr.T.Jayaraman for R2



CMA No. 547/ 2023

J U D G M E N T

The appeal has been filed by the petitioner/appellant challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal/III Additional District Judge, Coimbatore in M.C.O.P. No.146 of 2012, dated 28.01.2022.

2. The appellant / petitioner had filed a claim petition stating that on 02.03.2002 at about 11.15 A.M., while the petitioner's husband/Mr.E.Kennedy was standing in front of his office, the first respondent drove the lorry bearing Registration No.AP 9T 2296 in a rash and negligent manner and hit the petitioner's husband, as a result of which, he died and thus, the appellant was entitled to compensation.

3. The 2nd respondent filed a counter denying all the averments made in the claim petition and stated that in any case, the claim was excessive.

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



CMA No. 547/ 2023

WEB COPY

5. The appellant examined three witnesses on her side and marked Ex.P.1 to Ex.P.10. No witness was examined and no document was marked on the side of the respondents.

6. The Tribunal after considering the oral and documentary evidence filed on the side of the appellants awarded a compensation of Rs.4,43,500/- (Rupees Four Lakhs Forty Three Thousand Five Hundred only) to the appellant. Aggrieved by the said order, the appellant had preferred the instant appeal.

7. Mr.Ma.P.Thangavel, the learned counsel for the appellant/petitioner submitted the award of the Tribunal is erroneous both as regards the quantum of compensation and as regards finding of fixing 50 % contributory negligence on the deceased; that the evidence adduced on the side of the claimant would clearly show that the accident took place only on account of the rash and negligent driving of the offending vehicle which is insured with the 2nd respondent herein; that there is no contra evidence let in by the driver of the offending vehicle or by the



CMA No. 547/ 2023

Insurance Company; that the Tribunal had erroneously assumed contributory negligence on the side of the deceased; that this Court in ***Pallavan Transport Corporation Ltd., Vs. Dhanalakshmi and another*** reported in ***2004 (2) TN MAC 99 (DB)*** had held that whenever a person crosses road at a place other than the pedestrian crossing, it cannot be held that he is guilty of contributory negligence. The learned counsel for the appellant also relied upon the Judgment of the Hon'ble Supreme Court in ***Meera Devi & another Vs. H.R.T.C. & others*** reported in ***2014 (1) TN MAC 456 (SC)*** in support of his submission that in the absence of any cogent evidence to prove the plea of contributory negligence, the same cannot be fixed. The learned counsel further submitted that the Judgment of the Hon'ble Supreme Court in ***Sureshchandra Bagmal Doshi and another Vs. New India Assurance Company Limited and others*** reported in ***(2018) 15 SCC 649*** wherein, the Hon'ble Supreme Court had held that the Tribunal was justified in calculating the loss of income by taking 100% increase for future prospects and hence, prayed for enhancement.

8. Though notice has been served, none has entered appearance on behalf of the first respondent.



CMA No. 547/ 2023

WEB COPY 9. Mr.T.Jayaraman, the learned counsel for the second respondent, *per contra* submitted that the accident was of the year 2002 and the claim petition was filed nearly ten years after the accident which took place in Hyderabad; that the claim petition was filed in Coimbatore without disclosing the fact that the claim petition was filed by the father of the deceased at Hyderabad; that the claimant had not established that the driver of the offending vehicle was liable for negligence; that the evidence on behalf of the appellant is not reliable and hence, the Tribunal was justified in fixing 50% contributory negligence on the deceased; that the claimant's request for 100% increase under the head future prospects is also misconceived as the Judgment of Supreme Court ***Sureshchandra Bagmal Doshi and another Vs. New India Assurance Company Limited and others (cited supra)*** was rendered in the fact of that case.

10. This Court finds that on hearing the submissions of the learned counsels on either side that the primary issue in this appeal is whether the Tribunal was right in fixing 50% contributory negligence on the deceased. Though the second respondent has claimed that the father of the deceased had filed a petition for compensation in Hyderabad, no evidence has been



CMA No. 547/ 2023

let in to establish the same. Hence, the same cannot be accepted to deny the claim. The claimant, the wife of the deceased examined herself as P.W.1. As per her evidence, she came to know that her husband died due to an accident that took place at Hyderabad on 02.03.2002 at about 11.15 A.M. The evidence of P.W.3, who claims to be an eye witness is that the accident took place at about 11.15 P.M. The FIR/Ex.P1 states that the accident took place at about 11.15 P.M, though P.W.1/claimant claims that the accident took place in the morning. The FIR and other documents show that the accident took place at 11.15 P.M. This aspect is relevant in the instant case. The Tribunal had found that since the deceased crossed the road in night hours, the driver of the lorry cannot be made fully liable for the accident. The tribunal had observed as follows.

“8...Ex.P5 further show that the time of accident was 11.15 pm. This being odd hours of the day no body in the place of the driver of the lorry would except a person to cross the road. Further, the deceased should have taken care while crossing the road. Hence, this tribunal considering the time of accident and the manner of the accident holds that both the deceased as well as the driver of the lorry are equally liable for the accident.



WEB COPY



CMA No. 547/ 2023

The tribunal fixes the percentage of contributory negligence of the deceased as 50%.”

11. This Court is of the view that the reasons for which the Tribunal had fixed 50% contributory negligence on the deceased is erroneous. The said finding is based on an inference, which is not correct. A pedestrian crossing the road at night hours cannot be *ipso facto* liable for contributory negligence. It is well settled that in order to fix liability on the basis of the contributory negligence, there must be clear and cogent evidence. In the instant case, there is no evidence adduced on the side of the respondents to refute the evidence adduced on behalf of the claimant as regards the manner in which the accident took place. The interference made by the Tribunal merely because the deceased crossed the road during night hours and therefore, partly responsible for the accident is without any basis. The Hon'ble Supreme Court in ***Meera Devi and another vs. H.R.T.C. & others*** reported in ***2014 (1) TN MAC 456*** had held as follows:

"10. To prove the Contributory Negligence, there must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased



CMA No. 547/ 2023

Scooterist. In the absence of any cogent evidence to prove the Plea of Contributory Negligence, the said doctrine of common law cannot be applied in the present case. We are, thus, of the view that the reasoning given by the High Court has no basis and the Compensation awarded by the Tribunal was just and reasonable in the facts and circumstances of the case."

Further, this Court in ***Pallavan Transport Corporation Ltd., Vs. Dhanalakshmi and another*** reported in **2004 (2) TNMAC 99 (DB)** had held as follows:

"9. The next question is as to whether there is substance in the claim of the Corporation that the victim had also contributed because he crossed the road not in the pedestrian crossing line but at a place of his own choice.

PW-2, in his evidence, has stated that in the Road, no space has been set apart indicating the place where the pedestrians have to cross. Even otherwise, it cannot be said that simply because the victim crossed the



CMA No. 547/ 2023

road at a place other than the pedestrian crossing, it should be taken that he had contributed for the accident. It cannot be said that whenever a person crosses the road at a place other than the pedestrian crossing, he is guilty of contributory negligence."

12. From the above two judgments, it would be clear that in the absence of cogent evidence, it cannot be said that the deceased is guilty of contributory negligence merely because he had crossed the road at odd hours. Therefore, this Court is of the view that the finding of the Tribunal fixing 50 % contributory negligence on the deceased is liable to be set aside.

13. The next submission of the learned counsel for the appellant/petitioner is that the Tribunal ought to have taken 100% towards future prospects based on the Judgment of the Hon'ble Supreme Court in ***Sureshchandra Bagmal Doshi and another vs. New India Assurance Company Limited (cited supra)***. In the said case, the Hon'ble Apex Court held that while calculating the future rise in income, there is no bar to future prospects being taken at a percentage higher than the standard percentage fixed by the Hon'ble Apex Court in ***Sarla Verma and others vs.***



CMA No. 547/ 2023

Delhi Transport Corporation and another reported in **2009 (2) TNMAC 1 SC**

and ***National Insurance Co. Ltd., Vs. Pranay Sethi and others*** reported in **2017**

(2) TN MAC 609 (SC), provided the assessment of future income is based on evidence before the Tribunal. In the instant case, it is seen that the claimant has not let in any evidence to justify her claim for future prospects more than the percentage fixed by the Hon'ble Apex Court in ***Sarla Verma's case (cited supra)***. Hence, this Court is of the view that the Judgment of the Hon'ble Apex Court in ***Sureshchandra Bagmal Doshi and another vs. New India Assurance Company Limited*** (cited supra) relied upon by the learned counsel for the appellant will not come to his aid. The Tribunal considering the age of the victim had taken 50% towards future prospects. Since the deceased was employed in a private concern, the adoption of 50% future prospects is not correct. The Tribunal ought to have taken 40% towards future prospects as per the Judgment of the Hon'ble Supreme Court in ***National Insurance Co. Ltd., Vs. Pranay Sethi and others (cited supra)***. The claimant has not produced any evidence to show that the notional income taken by the Tribunal at Rs.4500/- for the accident that took place on 2002 is erroneous. Since the wife of the claimant was dependent on him, 1/3rd of his income, has to be deducted towards his personal expenses. The age of the deceased was 36 and hence, 40% is



CMA No. 547/ 2023

added towards Future Prospects and the multiplier adopted is '15'.

Thus, the compensation awarded by the Tribunal towards Loss of Dependency is modified as follows:

Rs.7,56,000/- [Rs.4,500/- + Rs.1800/- (40% future prospects) X 12 X 15 X 2/3].

14. The Tribunal had awarded Loss of Consortium at Rs.44,000/-, Loss of Estate and Funeral Expenses at Rs.16,500/- each. Though, the accident was of the year 2002, the Tribunal had enhanced the amount fixed by 10%. This is erroneous. Since the accident took place in the year 2002, the claimant is entitled to Rs.40,000/- under the head Loss of Consortium and Rs.15,000/- each under the heads, Loss of Estate and Funeral Expenses respectively. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	8,10,000/-	7,56,000/-	Reduced
2.	Loss of Consortium	44,000/-	40,000/-	Reduced



CMA No. 547/ 2023

3.	Loss of Estate	16,500/-	15,000/-	Reduced
4.	Funeral Expenses	16,500/-	15,000/-	Reduced
	Total	8,87,000/-		
		Deducted 50% towards contributory negligence	Nil	
	Grand Total	Rs.4,43,500/-	Rs.8,26,000/-	Enhanced by Rs.3,82,500/-

Since the deceased is not liable to 50 % contributory negligence, the claimant is entitled to the entire compensation amount as determined above.

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,43,500/- is hereby enhanced to Rs.8,26,000/- 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 enhanced 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 today. On such deposit, the appellant/petitioner is permitted to withdraw the



CMA No. 547/ 2023

award amount along with proportionate 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.

25.07.2023

dk

Index: Yes/No

Speaking or Non Speaking Order

Neutral Citation: Yes / No

To

The Motor Accident Claims Tribunal/
III-Additional District Court
Coimbatore.



WEB COPY



CMA No. 547/ 2023

SUNDER MOHAN, J

dk

C.M.A. No. 547 of 2023

Dated: 25.07.2023