



C.M.A.No.2871 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on 22.02.2023	Pronounced on 20.04.2023
---------------------------	-----------------------------

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2871 of 2022

1.A.S.Munnavar Basha,
S/o.Late Sathar Khan

2.P.Farhana Tahasamym,
W/o.A.S.Munnavar Basha

3.Minor Maaz Khan,
S/o.A.S.Munnavar Basha

All are residing at
No.6/46, Muslim Street, Anchetty Village,
Denkanikottai Taluk,
Krishnagiri District.

... Appellant

Vs.

1.M.Sudalaiyandi,
No.9, GST Road, Nehru Nagar,
Kadapery, Chennai 600 047.

2.G.Suresh,
Old No.89, New No.78, Narasingapuram,
Periyar Street, Kavanoor Village
Arakonam, Rani Pet District 632 531.

3.M.Padavetty,



C.M.A.No.2871 of 2022

S/o.Motaiyan,
No.143, Uchimalaikuppam Village,
Chengam Taluk, Thiruvannamalai District.

4.The Manager,
Reliance General Insurance Company Ltd.,
Having Office at No.141/3,
1st Floor, New Bye Pass Road,
M.P.Saradhi Nagar,
Next to Volks Wagon Car Show Room,
Vellore 632 012.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgment dated 12.08.2022 made in MCOP.No.429 of 2018 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Hosur, Krishnagiri District.

For Appellant : Mr.C.Prabakaran

For Respondents : Ms.C.Bhuvanasundari (for R4)

R1 to R3 – No appearance

J U D G M E N T

The Appeal has been filed against the Decree and Judgment passed in MCOP.No.429 of 2018 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Hosur, Krishnagiri District on 12.08.2022.

2.The claim Petitioners are the Appellants herein. For the sake of



C.M.A.No.2871 of 2022

convenience, the parties are referred to as per their ranking before the trial Court.

3.The claim Petitioners filed the above Appeal, seeking enhancement of compensation for the death of one Mr.Thanveer Khan, in a road traffic accident occurred on 02.05.2018. The Tribunal has awarded a sum of Rs.10,34,066/- with interest at the rate of 7.5% and costs. Aggrieved against the same and seeking enhancement, they have preferred this Appeal.

4.During the trial, on the side of the claim Petitioners, PW1 and PW2 were examined, Ex.P1 to Ex.P.23 were marked and on the side of the Respondents, none was examined and no document was marked.

5.Heard the learned counsel for the claim Petitioners/Appellants and learned counsel for the 4th Respondent/Insurance Company.

6.Learned counsel for the Petitioner would contend that 25% contributory negligence fixed upon the deceased for not having valid driving license is on the higher side. Per contra, learned counsel for the Insurance Company would



C.M.A.No.2871 of 2022

contend that the vehicle in which the deceased had travelled has no insurance coverage and the deceased has no driving license and he has also not wore helmet. Before the Tribunal PW2/Mohammed Shafeer was projected as occurrence witness, however, during the cross examination he has stated that while he was riding an another two wheeler, he saw the incident viz., a Tata Ace tempo bearing Reg. No.TN 22 BU 2764 came in a rash and negligent manner, dashed against the two wheeler driven by the deceased, so is Ex.P.1. In the cross examination, PW1 admitted that the deceased has no driving license. However, the trial Court appears to have fixed the contributory negligence at 25% and I am inclined to reduce the same to 10%.

7.Based upon Ex.P.4, Ex.P.5 & Ex.P.6, the trial Court has rightly come to the conclusion that the registration certificate of the van was initially registered with 1st Respondent and as could be seen from Ex.P.5, the vehicle has valid policy coverage on the date of the accident viz., 02.05.2018. As per Ex.P.6, 3rd Respondent is the present owner and as per the law contemplated under Section 157 of Motor Vehicles Act, once the insurance has been issued to the original owner, subsequently on transfer of vehicle, the policy of the insurance deemed to be transferred to the purchaser. Therefore, the trial Court



C.M.A.No.2871 of 2022

has rightly come to the conclusion that Respondents 1 to 3 are jointly and severally liable to pay compensation and based upon Ex.P.6, the trial Court has held that the driver of the offending vehicle viz., Tata Ace van driver had LMV vehicle and unladen weight of Tata Ace Van is below 7,500 kg and hence, the trial Court rightly come to the conclusion that driver of the vehicle has valid driving license and thus on the date of the accident, the driver of the offending vehicle had valid driving license and the vehicle has valid insurance coverage, therefore, all the Respondents are jointly and severally liable to pay the compensation. The said finding of the trial Court is hereby confirmed.

8.The notional income of the deceased, who was doing Cellphone sales business, was fixed by the Tribunal at Rs.8,000/- per month and I am inclined to fix at Rs.14,000/- per month. Future prospects is fixed at 40%, following the ratio laid down by the Constitution Bench's judgment of the Hon'ble Apex Court in the case of *National Insurance Company Limited V. Pranay Sethi and others*, reported in *2017 (2) TN MAC 609 (SC)*, accordingly, monthly income comes to Rs.19,600/- (14,000 + 5,600).



C.M.A.No.2871 of 2022

WEB COPY

9.The deceased was a bachelor and hence, as per the judgment of the Hon'ble Supreme Court in the case of *Sarla Verma & Others .Vs. Delhi Transport Corporation & another*, reported in *2009 (2) TNMAC 1 (SC)*, 50% has to be deducted towards personal expenses, which was rightly done by the Tribunal. After deducting 50% towards personal expenses, the loss of monthly contribution would be Rs.9,800/- (19,600 x 50/100).

10.At the time of the accident, the age of the deceased is 22 years, as per the age of the deceased, proper multiplier is '18' and hence the pecuniary loss sustained by the claim Petitioners is re-assessed as follows:

$$\text{Rs.9800} \times 12 \times 18 = \text{Rs.21,16,800/-}$$

11.The claim Petitioners are entitled for Rs.40,000/- each towards loss of love and affection, Rs.15,000/- is awarded towards funeral expenses, Rs.15,000/- is awarded towards loss of estate and Rs.10,000/- is awarded towards transportation. As per Ex.14, a sum of Rs.94,154/- is awarded towards medical expenses.

<i>S.No.</i>	<i>Head</i>	<i>Amount (Rs.)</i>
1	Pecuniary loss	2116800



C.M.A.No.2871 of 2022

S.No.	Head	Amount (Rs.)
2	Loss Love and affection	120000
3	Funeral expenses	15000
4	Loss of Estate	15000
5	Transportation	10000
6	Medical expenses	94154
	Total	2370954
	90% of compensation	2133858
	Rounded off	2133900

In total, the claim Petitioners are entitled to a sum of Rs.21,33,900/- (Rupees twenty one lakh thirty three thousand and nine hundred only) with interest at the rate of 7.5%.

12. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from Rs.10,34,066/- to Rs.21,33,900/- to the extent indicated above. No Costs.

(ii) the 4th Respondent/Insurance Company is directed to deposit the award amount of Rs.21,33,900/-, with interest and costs before the Tribunal, within a



C.M.A.No.2871 of 2022

period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the claim Petitioners are entitled to get their share, as per the ratio of apportionment made by the Tribunal. The claim Petitioners are permitted to withdraw their entire share with proportionate interest and costs, less the award amount already withdrawn, if any, by filing necessary application before the Tribunal.

(iv) The appellants/claim Petitioners are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

20.04.2023

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

sai

To

The Additional District Judge,
Hosur,

8/10



C.M.A.No.2871 of 2022

Krishnagiri District.

WEB COPY



WEB COPY



C.M.A.No.2871 of 2022

RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Judgment made in

C.M.A.No.2871 of 2022

Dated: 20.04.2023