



C.M.A(MD)No.994 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

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1.Rajkumar

2.Kavitha Devi

3.Minor Kamalesh Kumar

(Minor third petitioner represented by
his Father and natural guardian, the
1st petitioner)

... Appellants

.VS.

1.V.Mohanasundaram

2.The Branch Manager,
United India Insurance Company Ltd.,
Indian Bank Upstairs,
South Raja Street, Thanjavur.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the judgment and decree dated 22.10.2019 passed in M.C.O.P.No.1373 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Thanjavur.

For Appellants : Mr.I.Pinaygash

For R2 : Mr.J.S.Murali

For R1 : No appearance



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JUDGMENT

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This appeal is filed challenging the contributory negligence of 50% fixed on the deceased minor and for enhancement of the compensation.

2. The appellants filed M.C.O.P.No.1373 of 2017 alleging that on 12.03.2017, at about 12.00 noon, the deceased Mukeshkumar, who was studying 8th Standard, had gone in his two wheeler bearing Registration No.TN-49-AE-7503 to Kandamangalam. When returning from Kandamangalam in the evening, when he was coming near Puthiyalinekarai VAO Mohan's house, the driver of the Mini Bus bearing Registration No.TN-49-BE-0729 had come in the opposite direction in a rash and negligent manner and dashed against the two wheeler. As a result which, Mukeshkumar sustained serious injuries and died of injuries. He was a school student and thus, the claim petition is filed seeking a compensation of Rs.15,00,000/-.

3. This claim is resisted stating that the deceased was a minor and he had no driving licence at the time of accident. The quantum of compensation claimed, is excessive.



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4. In the enquiry before the Tribunal, on the side of the appellants, PW1 and PW2 were examined and Ex.P1 to Ex.P15 were marked. On the side of the Insurance Company, no witness was examined and no documentary evidence was produced.

5. On the basis of the oral and documentary evidence, the learned Tribunal found that though the accident had happened due to the rash and negligent driving of the driver of the Mini Bus bearing Registration No.TN-49-BE-0729, by permitting 13 years old boy to ride a two wheeler, the parents of the deceased have also contributed to the accident. In this view of the matter, the Tribunal fastened the responsibility for the accident at 50% each on the driver of the Mini Bus and on the parents of the deceased minor and arrived at the compensation of Rs.5,00,000/-. A sum of Rs.2,50,000/- was ordered to be paid as compensation, after deducting 50% towards contributory negligence.

6. The learned counsel for the appellants submitted that when the Tribunal found that the first respondent driver was responsible for the accident, fixing the responsibility for the accident on the parents of the



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deceased minor and deducting 50% towards contributory negligence, is excessive. He further submitted that Rs.35,000/- was awarded under the head of loss of love and affection. Each of the appellants/claimants is entitled to filial compensation under the head of loss of consortium. He further submitted that the Tribunal has not awarded any sum towards transport expenses. Thus, the learned counsel for the appellants seeks for enhancement of compensation.

7. In response, the learned counsel for the second respondent submitted that the very fact that the deceased minor, aged 13 years, was permitted to ride a geared two wheeler, shows that his parents were negligent enough to permit him to ride a geared two wheeler and expose him to the road accident. The learned Tribunal had rightly fixed the responsibility on the parents of the deceased minor and prays for dismissal of the appeal.

8. Considered the rival submissions and perused the records.

9. The factum of the accident and the death of the deceased minor due to the injuries suffered in the accident, are not in dispute. It is also not in dispute that the deceased was aged 13 years and he was riding a



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two wheeler bearing Registration No.TN-49-AE-7503 and he has no driving licence to ride the two wheeler. It is seen from the order of the learned Tribunal that the learned Tribunal on considering the oral and documentary evidence, came to the conclusion that the accident had happened because of the rash and negligent driving of the driver of the Mini Bus bearing No.TN-49-BE-0729. Having said so, the learned Tribunal has also found that by permitting 13 years old boy to ride a two wheeler in a busy traffic road, the parents had also contributed to the accident. In this view of the matter, the learned Tribunal fastened the liability at 50% on the Mini Bus driver and 50% on the parents, in effect, on the deceased minor.

10. No doubt, permitting 13 years old boy to ride a geared two wheeler, is against the Road Traffic Rules. At the age of 13 years, it is difficult to handle the geared vehicle for the reason that the boy would not have attained sufficient growth and maturity in terms of physical and mental ability strength to handle the vehicle. Therefore, it is no doubt that by riding a two wheeler in a public road, the deceased had invited the accident. The fact that the geared two wheeler was made available to the deceased also shows that the parents of the deceased were so careless



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and irresponsible to make the geared two wheeler available for the use of the deceased minor and that ultimately resulted in irreplaceable loss.

When the learned Tribunal found that the accident had happened because of the rash and negligent driving of the Mini Bus driver and when there is no immediate contribution on the part of deceased to contribute to the accident, fixing the responsibility for the accident at 50% on the deceased, in the considered view of this Court, is excessive. This Court, on considering the entire scenario, is of the view that contributory negligence on the part of the deceased can be fixed at 25%, rather, on the parents of the deceased at 25%.

11. That apart, this Courts finds from the award that only a sum of Rs.35,000/- was awarded towards loss of love and affection. As per the Judgment of the Hon'ble Supreme Court in ***Magma General Insurance Company Limited .vs. Nanu Ram @ Chuhru Ram reported in 2018(2) TN MAC 452(SC)***, the claimants are entitled for parental consortium, filial consortium and Spousal consortium at Rs.40,000/-. Therefore, instead of Rs.35,000/- towards loss of love and affection, this Court awards Rs.40,000/- each to the claimants towards loss of consortium. Since compensation was not awarded under the head of transport



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expenses, a sum of Rs.15,000/-, is awarded towards transport expenses.

The compensation awarded under the other heads are confirmed.

12. In view of the discussions held above, this Court modifies the compensation awarded by the Tribunal, as under:

S. No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	Loss of income	Rs.4,50,000/-	Rs.4,50,000/-	Same
2	Loss of love and affection	Rs.35,000/-	Nil	Set aside
3	Loss of Consortium	Nil	Rs.1,20,000/-	awarded
4	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Same
5	Transport Expenses	Nil	Rs.15,000/-	Awarded
	Total	Rs.5,00,000/-	Rs.6,00,000/-	Enhanced

After deducting 25% amount for contributory negligence, the award amount is arrived at Rs.4,50,000/-.

13. In fine, the Civil Miscellaneous Appeal is allowed in part and the award amount is enhanced from Rs.2,50,000/- to Rs.4,50,000/- with interest at 7.5% p.a from the date of claim petition till the date of realisation, excluding the delay period, if any, on the side of the appellants / claimants. The second respondent/Insurance Company is



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directed to deposit the above said enhanced award amount with accrued interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first appellant is entitled to a sum of Rs.1,75,000/-, the second appellant is entitled to a sum of Rs.2,75,000/- and the third appellant is entitled a sum of Rs.50,000/- with proportionate interests and costs. The appellants 1 and 2 are permitted to withdraw their respective shares along with interest, after following due process of law. The share of third appellant/minor claimant shall be deposited in any one of the nationalised banks in fixed deposit till he attains majority. The guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor. Registry is directed to draft the decree in this appeal only after payment of excess Court fee, if any, towards the enhanced award amount, before the Registry. No costs.

07.11.2023

Index :Yes/No
Internet :Yes/No
NCC :Yes/No
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To

1.The Motor Accident Claims Tribunal/
Special District Judge,
Thanjavur.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN,J.

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