



C.M.A(MD).No.1252 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.04.2023

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

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1.A.Vennila
2.Vishnupriya
3.Tharani
4.Minor Durga
represented by her mother and
guardian namely A.Vennila

...Appellants/petitioners

Vs.

1.A.Mugeswari
2.The Regional Manager,
The Oriental Insurance Company Limited,
No.4, Bharathidasan Road II Floor,
Contontment,
Tiruchirappalli-1.

....Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 05.10.2021 in M.C.O.P.No.65 of 2019 on the file of the Motor Accident Claims Tribunal/Special District Court, Tiruchirappalli against contributory



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negligence and quantum and seeking enhancement of compensation from a sum of Rs.52,37,142/-.

For Appellant : Mr.N.Sudhagar Nagaraj

For Respondents : Mr.A.Ilango for R2

J U D G M E N T

Challenging the award passed by the Motor Accident Claims Tribunal/Special District Court, Tiruchirappalli, in M.C.O.P.No.65 of 2019 dated 05.10.2021, the present Civil Miscellaneous Appeal has been filed.

2. The deceased, namely, Annamalai, was aged about 55 years and was working as Selection Grade Conductor in Tamil Nadu State Transport Corporation. On 06.11.2018, at about 11.45 a.m., the deceased was proceeding in a two wheeler bearing Registration No.TN-59-R-4252 in Trichy-Lalgudi Main Road to attend the duty in Manthurai Bus Depot. At that time, the first respondent's car bearing Registration No.TN-47-AS-6189 came in the same direction and dashed behind the deceased's vehicle. As a result, the deceased succumbed to injuries. Hence, the claimants/legal heirs



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of the deceased filed a claim petition.

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3. The second respondent insurer took a stand that the deceased has driven the two wheeler negligently.

4. Before the Tribunal, P.W.1 to P.W.3 were examined and Exs.P1 to Exs.P22 were marked. On the side of the respondents, R.W.1 was examined and Exs.R1 to Exs.R4 were marked.

5. The Tribunal, after considering the nature of the evidence adduced, found that the deceased, while proceeding in a two wheeler, without proper care suddenly crossed the road in order to reach the bus depot and has fixed 20% of contributory negligence on the deceased and awarded a sum of Rs.52,37,142/- (Rupees Fifty Two Lakhs Thirty Seven Thousand One Hundred and Forty Two only). Out of the total compensation amount, after deducting 20% towards contributory negligence, the Tribunal has directed the respondents to pay a sum of Rs.41,89,714/- (Rupees Forty One Lakhs Eighty Nine Thousand Seven Hundred and Fourteen only).



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Challenging the deduction of 20% towards contributory negligence, the present appeal has been filed by the claimants.

6. The main contention of the learned counsel appearing for the appellants is that there is no evidence to establish the plea of contributory negligence. However, the Tribunal has simply fixed 20% contributory negligence on the deceased, merely on the basis of assumption. Therefore, the fixation of contributory negligence on the deceased has to be set aside. According to him, when the first respondent's car dashed behind the vehicle of the deceased, the Tribunal ought not to have fixed the contributory negligence on the deceased, particularly without any evidence in this regard. Hence, he prays for setting aside the portion of the judgment fixing 20% of contributory negligence on the part of the deceased. In support of his contention, he relied upon the judgment of the Hon'ble Apex Court of India in the case of *Mohammed Siddique and another vs. National Insurance Company Limited and others* reported in *2020(1) TNMAC 161(SC)*.



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7. The learned counsel appearing for the second respondent would submit that P.W.2, Mohammed Rafiq was an eyewitness and his evidence would clearly indicate that the deceased was trying to cross the road to enter into bus depot, where he was working. That apart, the Motor Vehicle Inspector's report clearly shows the nature of damages. If the car hits the backside of the deceased, there would not have been damage on the front mudguard and it would clearly show that the deceased has crossed the road suddenly which resulted in the accident. Therefore, the contributory negligence fixed by the Tribunal does not require any interference. In support of his contention, he relies upon the judgment of the Hon'ble Apex Court of India in the case of *Yerramma and others vs. G.Krishnamurthy* reported in **2014 ACJ 2161**.

8. The Tribunal, considering the above evidence, in paragraph No. 8, has concluded that the second respondent has not proved the negligence on the part of the rider of the motorcycle. On the other hand, the claimants have established the rash and negligence on the part of the driver of the first respondent. Having recorded such a finding after assessing the evidence, the



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Tribunal, in paragraph No.10, has concluded that since the deceased was not wearing the helmet, he was also responsible. Similarly, the Tribunal has fixed the contributory negligence of 20% on the deceased on the ground that the accident took place near bus depot. However, the evidence of P.W.2 clearly shows that the deceased has not worn the helmet. In paragraph No.10, the Tribunal has justly assessed and fixed the contributory negligence on the deceased. Having recorded a finding that the second respondent had not established the negligence on the part of the deceased in paragraph No.10, the Tribunal has come to the conclusion that the deceased also contributed for accident, since he has not worn the helmet. However, merely because the postmortem report indicated the head injuries on the deceased, it cannot be concluded that he did not wear the helmet. Even after wearing the helmet, the injury on the head is possible depending on the velocity and impact of the accident. Mere injury may not be determinative factor to find out whether the deceased has worn the helmet or not? whereas, the evidence of eyewitness clearly indicates that the deceased during the time of accident was wearing the helmet. Therefore, the finding of the Tribunal is not proper. With regard to the other aspects, particularly,



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the Motor Vehicle Inspector's report, though the damages were also found on the front side of the bike, it is relevant to note that the damages to the vehicle may happen due to velocity and speed at any part. It cannot be expected that the damages will cause only in particular area. When the vehicles are coming in a high speed in the highway, the possibility of vehicle turning and rolling cannot be ruled out. In such view of the matter, though the Motor Vehicle Inspector found out certain damages on the motor cycle, it cannot be inferred that the Motor Cycle suddenly crossed the road and invited the accident. If such contention of the respondent is accepted, the motorcycle would have been thrown away some distance from the main road. In this regard, no other evidence whatsoever is available on record to show that the motorcycle was thrown and dragged for some distance on the main road.

9. In such view of the matter, in the absence of any other evidence to establish the contributory negligence on the part of the deceased, merely on inference, the Tribunal has fixed 20% of contributory negligence, which is, in the opinion of this Court, not proper. It is a well settled position of law



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that the contributory negligence has to be proved. Except the evidence of R.W.1, the driver of the offending vehicle, no other evidence is available on record. In the absence of any proof, merely on the basis of inference, the contributory negligence cannot be fixed on the deceased. Therefore, 20% of contributory negligence fixed on the deceased by the Tribunal, is set aside.

10. Accordingly, this Civil Miscellaneous Appeal is allowed and the total compensation of Rs.52,37,142/- (Rupees Fifty Two Lakhs Thirty Seven Thousand One Hundred and Forty Two only) as calculated by the Tribunal, before deducting 20% of contributory negligence, is to be paid by the respondents with accrued interests and costs from the date of petition till the date of realization to the credit of M.C.O.P.No.65 of 2019, on the file of the Motor Accident Claims Tribunal/Special District Court, Trichirapalli, within a period of three months from the date of receipt of a copy of this judgment, out of which, the first appellant is entitled to get a sum of Rs.30,37,142/- (Rupees Thirty Lakhs Thirty Seven Thousand One Hundred and Forty Two only), the second and third appellants are entitled to get a sum of Rs.14,00,000/- (Rupees Fourteen Lakhs only) and the fourth



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appellant is entitled to get a sum of Rs.8,00,000/- (Rupees Eight Lakhs only). On such deposit, the major claimants are permitted to withdraw the award amount as apportioned by the Tribunal by making necessary application before the Tribunal. The Tribunal shall deposit the shares of the minor claimants in a Fixed Deposit in any one of the Nationalized Banks, till the minor claimants attain majority. The guardian of the minor claimants is permitted to withdraw the interest accrued thereon once in three months directly from the bank. No costs.

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ssb

Index:Yes/No

Internet:Yes/No

To

Additional District Court (Fast Track Court), Tenkasi.



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