



CMA.No.124 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.124 of 2022

1. Sagunthala

2. Minor Arul Prakash

(Minor 2nd Appellant is rep. by Next Friend
Mother Sagunthala the 1st appellant herein)

... Appellants

vs.

1. A.Pradeep

2. The Divisional Manager,

National Insurance Co. Ltd.,

2nd Floor, 3rd North Car Street,

Madurai, Tamilnadu.

Branch at 3rd Floor,

Anuradha Complex, Bangalore Road,

Krishnagiri - 635 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 29.09.2021 in M.C.O.P.608/2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

For Appellants : Mr.S.P.Yuvaraj

For R2 : Mrs.R.Sreevidhya

J U D G M E N T



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The appellants are the claimants in M.C.O.P.608/2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.40,00,000/- for the death of one Thirupathi (husband of the 1st claimant, father of the 2nd claimant) in a road accident which happened on 20.06.2020.

2. The brief case of the appellants / claimants is as follows :

On 20.06.2020, Thirupathi (deceased) was riding a two wheeler TVX XL Super Heavy Duty on Hosur -Krishnagiri National Highway. When he was nearing Sikkarimedu Saravanabhavan hotel, a car bearing Registration number TN-65-AJ-8876 came in the opposite direction and hit the two wheeler, resulting in his instantaneous death.

3. According to the claimants, the rash and negligent driving of the driver of the car bearing Registration number TN-65-AJ-8876 was the cause of the accident and that since the said vehicle was insured with the second respondent, the National Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.



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4. In the Tribunal, the owner of the vehicle remained absent and was set *exparte*. The second respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal after analysing the evidence on record fixed 90% negligence on the part of the driver of the car bearing Registration number TN-65-AJ-8876 and 10% negligence on the part of the deceased as he did not have a valid driving licence and awarded a compensation of Rs.13,14,000/- (after deducting 10% contributory negligence) together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide its orders dated 29.09.2021. The Tribunal also held that the liability of the first and second respondents are joint and several.

6. Aggrieved over the quantum of compensation awarded by the Tribunal and challenging 10% contributory negligence fastened on the



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part of the deceased, the appellants / claimants have filed the present appeal under Section 173 of the Motor Vehicles Act.

7. Heard Mr.S.P.Yuvaraj, learned counsel appearing for the appellants and Mrs.R.Sreevidhya, learned counsel appearing for the second respondent.

8. Mr.S.P.Yuvaraj, learned counsel appearing for the appellants contended that the Tribunal has not awarded just compensation and also deducted 10% towards contributory negligence on the part of the deceased even though the driver of the Car was rash and negligent in driving his car. He drew the attention of this court to the evidence of the M.Mahendiran (R.W.1) the then Special Sub Inspector of Police, Gurubarapalli Police Station and contended that the police after conducting investigation had laid a final report against the driver of the car. Hence, the order passed by the Tribunal fastening 10% contributory negligence is liable to be set aside.

9. Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the second respondent contended that the deceased did not have a valid



driving licence for his two wheeler and the vehicle was also not insured.

Hence, fastening 10% contributory negligence on the part of the deceased by the Tribunal is in order. She also contended that the Award passed by the Tribunal is based on well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

10. A perusal of the evidence of M.Mahendiran (R.W.1), the then Special Sub Inspector of Polcie, Gurubarapalli Police Station shows that the driver of the Maruthi Suzuki car was the wrong doer. The FIR (Ex.P1) was registered against the driver of the car and the police after conducting investigation had laid a final report against the driver of the car. The Tribunal had, without any basis, fastened negligence on the part of the deceased to the extent of 10%. In the circumstances, 10% contributory negligence fastened on the part of the deceased Thirupathi is liable to be set aside.

11. According to the claimants, the deceased was a Mason, aged about 40 years, earning a sum of Rs.18,000/- per month. In the facts and



circumstances, the Tribunal had rightly fixed the notional monthly income of the deceased as Rs.9,000/- as there is no income proof. The Tribunal had deducted Rs.3,000/- towards personal expenses and applied proper multiplier as per the decision rendered in *Sarla Verma and others vs. Delhi Transport Corporation and another* reported in *(2009) 6 SCC 121 and*. The Tribunal has also granted compensation towards Loss of Consortium, Loss of Estate and Funeral Expenses as per the decision in *National Insurance Co. vs Pranay sethi and others*. Thus, the quantum of compensation awarded by the Tribunal is just and reasonable.

12. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The quantum of compensation passed by the Tribunal is upheld.
- iii. 10% of the contributory negligence fastened on the part of the deceased Thirupathi is set aside.
- iv. The liability of the first respondent (owner) and the second respondent (the National Insurance Company Limited) is joint and several and the second respondent is directed to deposit the entire compensation amount i.e., Rs.14,60,000/- (less the amount already



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deposited) together with interest @ 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order/uploading of the order to the credit of M.C.O.P.608/2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

- v. On such deposit being made, the claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.
- vi. The share of the minor appellant is directed to be deposited in any one of the Nationalised Bank till he attains majority.

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Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
vum

R.HEMALATHA, J.

vum

To



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1.The Motor Accidents Claims Tribunal,
Special District Judge, Krishnagiri.

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

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