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C.M.A. No.540 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.03.2024

CORAM

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

C.M.A. No.540 of 2023

1. M.Suriyakala
2. Minor M.Anbumani
3. Minor M.Abirami
4. P.Ramasamy
5. Kamatchi

(Minor petitioners 2 and 3 rep. by Mother,
Guardian, NF M.Suriyakala, the 1st petitioner herein)

.. Appellants

Versus

1. K.Balasubramanian
2. The Divisional Manager,
National Insurance Company Ltd.,
No.110, JN Street, Puducherry 605 001.
3. S.Thirupathi
4. The Manager, Cholamandalam MS
General Insurance Co. Ltd.,
II Floor, Shaw Wallace Building,
154, Thambu Chetty Street,
Parry's Corner, Chennai 600 001.

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in MCOP.No.4268 of 2018, dated 31.10.2022 on the file of the Motor Accident Claims Tribunal/ I Additional District & Sessions Judge (FAC) at Cuddalore.



C.M.A. No.540 of 2023

WEB COPY

For appellant	: Ms.Ramya V. Rao
For respondents	
for RR1 and 3	: No Appearance
for R2	: Mr.D.Bhaskaran
for R4	: Mr.J.Michael Visuvasam

JUDGMENT

Challenging the judgment and decree in MCOP.No.4268 of 2018, dated 31.10.2022 on the file of the Motor Accident Claims Tribunal/ I Additional District & Sessions Judge (FAC) at Cuddalore, the claimants have come up with this appeal.

2. The facts that are necessary for disposal of the case would run thus:

On 21.06.2018 at about 3.45 p.m., when the deceased Murugan was driving the third respondent's Light Goods Vehicle bearing Registration No.TN-46-H-1815 from west towards east, opposite to Pachakannu Ammal Thirumana Mandapam, Veenangeni, the first respondent's Multi Axile Goods Vehicle bearing Registration No.TN-28-AD-7377 came from the opposite direction at a great speed in a rash and negligent manner, and dashed against the third respondent's vehicle, in which the deceased sustained fatal injuries and he was taken to Government Hospital, Kurinjipadi, where he was declared dead. The respondents 1 and 2 are the owner and insurer of the Multi Axile



C.M.A. No.540 of 2023

Goods Vehicle, which caused the accident and hence they are jointly and severally liable to pay the compensation to the petitioner. The third and fourth respondents are the owner and insurer of the Light Goods Vehicle. The claimants, who are the wife, children and parents of the deceased filed claim petition seeking compensation of Rs.30,00,000/-.

3. In order to prove the claim, on the side of the claimants, PW1 to PW3 were examined and Exs.P1 to P15 were marked and Ex.R1 was marked through cross examination of PW1. On the side of the respondents, RW1 was examined and Exs.R2 to R4 were marked.

4. The claim petition was contested by the National Insurance Company Ltd. disputing the manner of accident and their liability before the Tribunal.

5. The Tribunal after analysing the evidence adduced on both sides came to the conclusion that the claimants are entitled for a sum of Rs.27,20,000/- as compensation and determines contributory negligence at 50% on the part of the deceased and 50% on the part of the driver of the Goods Vehicle No.TN-28-AD-7377 and hence, the claimants would be entitled to Rs.13,60,000/- as compensation.



C.M.A. No.540 of 2023

WEB COPY

6. The learned counsel for the appellants/claimants would submit that the Tribunal fixing liability at 50% against the deceased is not proper. In the cross examination, PW3, who is the defacto complainant of the FIR, has categorically deposed that the accident had occurred only due to the driver of the Lorry bearing Registration No.TN-28-AD-7377 driven by Ranjith @ Karthik and not because of the deceased Murugan. To disprove the same, nothing has been evidenced from the second respondent Insurance Company. Hence, fastening 50% liability on the side of the deceased is not correct and the same needs to be modified.

7. The learned counsel for the second respondent would submit that the Tribunal by relying upon FIR and other documents rightly fixed negligence in the ratio of 50:50, which needs no interference of this Court and the same may be confirmed.

8. As rightly pointed out by the learned counsel for the appellant that on perusal of the deposition of PW3 and PW1 as well as the FIR, it is clear that the accident had occurred only due to the rash and negligent driving of the Goods Vehicle bearing Registration No.TN-28-AD-7377 driven by Ranjith @



C.M.A. No.540 of 2023

Karthik and not by the deceased Murugan. In such circumstances, fastening of liability at 50% against the deceased is not proper. Therefore, as there was a categorical finding against the driver of the Lorry bearing Registration No.TN-28-AD-7377, this Court is inclined to fasten liability at 25% against the deceased Murugan and 75% against the driver of the Goods Vehicle No.TN-28-AD-7377.

9.As far as quantum is concerned, the only issue raised by the learned counsel for the petitioner is with regard to fixation of notional income. It is the contention of the learned counsel for the appellants that as the deceased was working as driver at the time of the accident and aged about 38 years, the Tribunal ought to have fixed notional income of the deceased at Rs.15,000/- instead of Rs.13,000/-.

10. However, the learned counsel for the respondent submitted that the Tribunal has rightly fixed the notional income of the deceased at Rs.13,000/-, which needs no interference of this Court.

11. There is no dispute with regard to the avocation of the deceased that he was working as driver at the time of the accident. Taking into consideration



C.M.A. No.540 of 2023

of the avocation and year of the accident i.e., 2018, this Court is of the view that the Tribunal ought to have fixed Rs.14,000/- as notional income of the deceased. Therefore, **Loss of Income** is calculated by taking Rs.14,000/- as notional income as follows:

Monthly Income of the deceased:	Rs.14,000/-
Add: Future Prospects at 40% :	
40% of 14,000	Rs.5,600/-

	Rs.19,600/-
Annual Income (19,600 x 12) :	Rs.2,35,200/-
Multiplier :	x 15

	Rs.35,28,000/-
Less: 1/4 Deduction towards personal expenses :	Rs.8,82,000/-

Loss of Income	Rs.26,46,000/-

12. The amounts awarded by the Tribunal under various other heads are just and fair and hence, they are confirmed.

13. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:



C.M.A. No.540 of 2023

<i>S. No.</i>	<i>Heads under which amounts are awarded</i>	<i>Amount awarded by the Tribunal in Rs.</i>	<i>Amount awarded by this Court in Rs.</i>
1.	Loss of Income	24,57,000	26,46,000
2.	Loss of Spousal Consortium	44,000	44,000
3.	Loss of Parental Consortium	88,000	88,000
4.	Loss of filial Consortium	88,000	88,000
5.	Funeral Expenses and Loss of Estate	33,000	33,000
6.	Transportation Charges	10,000	10,000
	Total	27,20,000	29,09,000
		After Deduction of 50% of contributory negligence 13,60,000	After Deduction of 25% of contributory negligence 21,81,750

14. The appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.13,60,000/-** to **Rs.21,81,750/-**. The second respondent/Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.4268 of 2018 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount if any already deposited, within a period of three weeks from the date of receipt of a copy of this judgment. Upon such deposit being made, the Tribunal is directed to transfer the entire amount to the respective bank account, by way of RTGS, within a period of three weeks from the deposit or



C.M.A. No.540 of 2023

from the date of receipt of the Bank details obtained from the claimants or application for withdrawal from the claimant, whichever is earlier. Further, this Court is directed to deposit a sum of Rs.8,81,750/- to the first claimant, who is the wife of deceased; a sum of Rs.1,50,000/- each to the claimants 4 and 5, who are the parents of the deceased. A sum of Rs.5,00,000/- each to the minor appellants 2 and 3. The amount in respect of the minor shall be deposited in a Nationalized Bank, till they attain majority and the yearly basis interest can be withdrawn by the first appellant for maintenance of the minors. The appellants/claimants are directed to pay necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee has been produced by the claimants. No costs.

20.03.2024

Speaking Order : Yes / No
Index : Yes / No
pvs

To

1. I Additional District & Sessions Judge (FAC) at Cuddalore
2. The Section Officer,
V.R.Section, High Court, Madras.



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C.M.A. No.540 of 2023

KRISHNAN RAMASAMY.J.,

pvs

C.M.A. No.540 of 2023

20.03.2024