



CMA.No.567 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.567 of 2023

1. Rengasamy

2. Amutha

... Appellants

vs.

1. S.Sekar

2. The Divisional Manager,
M/s.National Insurance Co. Ltd.,
No.74-A, Paramathy Road,
Namakkal - 637 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 09.12.2022 in M.C.O.P.No.114/2021 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellants : Mr.S.Kamadevan

For R2 : Mr.J.Chandran

R1 : No appearance

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.114/2021 on the file of the Motor Accident Claims Tribunal, Principal District Court,



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Perambalur. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.30,00,000/- for the death of one Aakash (the son of the claimants) in a road accident which happened on 08.02.2021.

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

On 08.02.2021, Aakash (deceased) was riding his two wheeler bearing registration number TN-46-V-4156 on Veppanthattai - Palaiyur road. At about 4.30 p.m., a lorry bearing registration number. TN 28 AH 4077 came on the opposite direction in a rash and negligent manner and hit the two wheeler driven by the said Aakash (deceased), as a result of which, he was thrown out and sustained injuries. He was immediately rushed to Hospital. However, he succumbed to injuries on 13.02.2021.

3. According to the claimants, Aakash was aged 20 years on the date of accident and was working as a two wheeler mechanic, earning a sum of Rs.20,000/- per month. They have also contended that the accident took place due to rash and negligent driving of the driver of the lorry bearing registration number TN 28 AH 4077 belonging to the first



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respondent and that since the said vehicle was insured with the second respondent the National Insurance Company Limited, Namakkal, the owner and the insurer are jointly and severally liable to pay compensation to him.

4. The first respondent, the owner of the lorry remained absent before the Tribunal and was set *exparte*. The second respondent, Insurance Company 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, awarded a compensation of Rs.7,00,002/- to the claimants. The Tribunal further held that the deceased a 17 years old boy should not have driven a motorcycle on road and deducted 30% towards contributory negligence on his part and awarded a sum of Rs.4,90,000/- to the claimants together with interest @ 7.5% per annum.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellants / claimants have filed the present appeal.



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7. Heard Mr.S.Kamadevan, learned counsel appearing for the appellants and Mr.J.Chandran, learned counsel appearing for the second respondent.

8. According to the claimants, their son was aged 20 years on the date of accident. In the postmortem certificate (Ex.P7), his age was mentioned as 19 years. However, Accident Register (Ex.P2), discharge summary (Ex.P3), Medical Bills (Ex.P4 & Ex.P5) and the death extract (Ex.P6) show that the age of the deceased was 17 years. The Tribunal had therefore fixed the age of the victim as 17 years on the date of accident. Since the victim was not supposed to drive a two wheeler, 30% of the contributory negligence was fastened on the deceased by the Tribunal. I do not find any reason to interfere with the findings of the Tribunal with regard to fixing the age of the deceased and fastening contributory negligence to the extent of 30%.

9. In so far as the quantum of compensation is concerned, in the absence of income proof, the Tribunal took the notional income of the deceased as Rs.30,000/- per annum. In the decision in ***Kishan Gopal &***



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Anr vs Lala & Ors reported in **(2014) 1 SCC 244**, the Supreme Court fixed the notional annual income of the deceased minor victim at Rs.30,000/- for the accident that took place in the year 1992. In the instant case, the accident happened in the year 2021. Therefore fixing the notional annual income of the minor as Rs.1,00,000/- would meet the ends of justice. The proper multiplier to be adopted in the instant case is 18 as per the decision rendered in **Sarla Verma and others vs. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**.

Calculation :

$$\begin{aligned}\text{Notional Annual Income} &= \text{Rs.1,00,000/-} \\ \text{Applying multiplier 18} &= \text{Rs.1,00,000/-} \times 18 \\ &= \text{Rs.18,00,000/-}\end{aligned}$$

In addition to that the claimants are entitled to Rs.80,000/- (40,000 X 2), Rs.1,31,302/-, Rs.8,700, Rs.15,000/- and Rs.15,000/- for Loss of Consortium, Medical expenses, Transportation, Loss of Estate and Funeral Expenses respectively as per the decision in **National Insurance Co. vs Pranay sethi and others** (cited supra). Thus, the claimants are entitled to a total compensation of Rs.14,35,000/- (18,00,000 + 80,000 + 15000 + 15000 + 1,31,302 + 8,700 = 20,50,002 (-30% contributory



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negligence) = Rs.14,35,000/-) as shown in the following tabular column:

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs.18,00,000 /-
2.	Loss of consortium (Rs.40,000/- x 2)	Rs.80,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
5.	Medical expenses	Rs.1,31,302/-
6.	Transportation charges	Rs.8,700/-
Total		Rs.20,50,002/-
(-) 30% contributory negligence		Rs.14,35,001.4 rounded off to Rs.14,35,000

10. Thus, the compensation awarded by the Tribunal is enhanced from Rs.4,90,000/- to Rs.14,35,000/- which would carry interest at the rate of 7.5% per annum.

11. In the result,

- The Civil Miscellaneous Appeal is partly allowed. No costs.
- The percentage of contributory negligence i.e., 30% fixed on the part of the deceased Aakah by the Tribunal, is confirmed.



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iii. The compensation awarded by the Tribunal is enhanced from Rs.4,90,000/- to Rs.14,35,000/-.

iv. The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, within a period of four weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

v. The second respondent, M/s. National Insurance Company Limited, Limited, is directed to deposit the enhanced compensation amount of Rs.14,35,000/- (less the amount already deposited) together with interest at the rate of 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 to the credit of M.C.O.P.No.114/2021 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

vi. On such deposit being made, the appellants / 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.

19.08.2024



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Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes / No

vum

To

1.The Motor Accidents Claims Tribunal
/ Principal District Judge, Perambalur

2. The Divisional Manager,
M/s.National Insurance Co. Ltd.,
No.74-A, Paramathy Road,
Namakkal - 637 001.

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



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R.HEMALATHA, J.

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