



Civil Miscellaneous Appeal No.1000 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1000 of 2024

1.Y.Banumathi
M/o.Y.Naresh (late)

2.S.Yuvaraj
F/o.Y.Naresh (late)

... Appellants

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Division,
Kanchipuram Division.

... Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.6387 of 2017 dated 22.02.2022 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellants : Mr.K.Balaji

For Respondent : Mr.S.S.Santhosakumar

JUDGMENT

The appellants/claimants, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, IV Court



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of Small Causes, Chennai, in M.C.O.P.No.6387 of 2017, dated 22.02.2022, have filed this appeal seeking enhancement of compensation.

2. The case of the claimants is that they are the parents of the deceased Naresh. The deceased was riding a two-wheeler on 23.08.2017 in GST Road, Tambaram to Chengalpattu and at about 17.30 hours, when the vehicle was near Maraimalai Nagar, the offending vehicle belonging to the respondent transport corporation was driven in a rash and negligent manner and it hit the two-wheeler, as a result of which the deceased was thrown out of the vehicle and he sustained multiple grievous injuries and died on the spot. It is under these circumstances, the claim petition came to be filed by the parents of the deceased seeking for payment of compensation.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place due to the rash and negligent driving on the part of the driver belonging to the respondent transport corporation. Having rendered such a finding, the Tribunal attributed 15%



contributory negligence on the ground that the deceased was not in possession of a valid driving license. Thus, only 85% negligence was attributed against the driver of the bus belonging to the respondent transport corporation. The Tribunal, thereafter, proceeded to determine the compensation and awarded total compensation of Rs.14,95,800/- in the following manner:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of dependency	13,60,800/-
2.	Loss of love and affection	1,00,000/-
3.	Loss of estate	15,000/-
4.	Funeral expenses	15,000/-
5.	Transportation expenses	5,000/-
	Total	14,95,800/-

Out of Rs.14,95,800/-, 85% which works out to Rs.12,71,430/- was rounded off to Rs.12,71,500/- and it was directed to be paid by the respondent transport corporation with interest at 7.5% p.a.

4. The appellants/claimants, not being satisfied with the compensation awarded by the Tribunal, has approached this Court seeking for enhancement of compensation.

5. Heard Mr.K.Balaji, learned counsel for appellants/claimants and



Mr.S.S.Santhosakumar, learned counsel for respondent transport corporation.

6. This Court carefully considered the submissions made on either side and the materials available on record.

7. This Court also carefully went through the award passed by the Tribunal.

8. Learned counsel for appellants/claimants primarily raised two grounds. The first ground is that the Tribunal went wrong in attributing 15% contributory negligence on the deceased on the ground that the deceased did not possess a valid driving license. Learned counsel submitted that not possessing a valid driving license by itself cannot be a reason to attribute contributory negligence without there being any other material to show that the deceased had in fact contributed negligence resulting in the accident. The other ground raised by learned counsel is with regard to the notional monthly income fixed by the Tribunal at Rs.9,000/- p.m. when the appellants/claimants were making a claim that



the deceased was earning a sum of Rs.1,000/- per day as a turner in a private company.

9. Learned counsel for respondent transport corporation submitted that the Tribunal has considered the entire facts and circumstances of the case and has rightly fixed the contributory negligence and also the compensation payable under various heads and that the same does not require the interference of this Court and the learned counsel sought for dismissal of the appeal.

10. Insofar as the first issue regarding the absence of driving license for the deceased to ride the two-wheeler is concerned, this Court holds that the riding of a vehicle without a license by itself cannot raise an assumption that there was negligence and under such assumption, contributory negligence cannot be attributed against the rider of the vehicle. Useful reference can be made to the judgment of the Apex Court in ***Dinesh Kumar J. alias Dinesh J. v. National Insurance Company Limited and others*** [2018 (1) SCC 750].

11. The Tribunal, on appreciation of evidence, had come to a very



categorical conclusion that the accident had taken place only on account of the rash and negligent driving on the part of the driver of the bus belonging to the respondent transport corporation. Having come to such an affirmative conclusion, the Tribunal did not have any material to show that non-possession of driving license by the deceased by itself had contributed to the negligence and thereby, contributory negligence can be attributed to the deceased. In view of the same, this Court is inclined to interfere with the finding of the Tribunal with regard to attributing 15% contributory negligence on the deceased and the same is hereby set aside.

12. The next issue pertains to the notional monthly income that was fixed by the Tribunal at Rs.9,000/- p.m. Even though the appellants/claimants took a stand that the deceased was working as a turner in a private company and was earning a sum of Rs.1,000/- per day, there was absolutely no material to substantiate the same except the *ipse dixit* of appellants/claimants. Therefore, the Tribunal proceeded to fix the notional monthly income at Rs.9,000/- considering the fact that the deceased was aged about 19 years at the time of his demise.

13. This Court, considering the year during which the accident had



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taken place and also giving due consideration to the rise in price and cost of living, is inclined to increase the notional income to Rs.9,500/- p.m. If so, the loss of income/dependency would be:

Monthly Income	:	Rs. 9,500/-
Add: Future Prospects	:	Rs. 3,800/-
40% of Rs.9,500/-		-----
		Rs. 13,300/-
Annual Income (13,300 * 12)	:	Rs. 1,59,600/-
Less : Personal expenses		
Rs.1,59,600/- * 1/2	:	Rs. 79,800/-

		Rs. 79,800/-
Multiplier	:	x 18

Loss of income/dependency	:	Rs.14,36,400/-

14. The compensation awarded under the other heads are reasonable and does require the interference of this Court.

15. In the light of the above discussion, this Court modifies the compensation in the following manner:



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<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Loss of dependency	13,60,800/-	14,36,400/-
2.	Loss of love and affection	1,00,000/-	1,00,000/-
3.	Loss of estate	15,000/-	15,000/-
4.	Funeral expenses	15,000/-	15,000/-
5.	Transportation expenses	5,000/-	5,000/-
	Total	14,95,800/-	15,71,400/-
	Less: Contributory negligence 15%	2,24,370/-	-
	Compensation payable	12,71,430/-	15,71,400/-
	Rounded off to	12,71,500/-	15,71,400/-

16. Accordingly, the compensation awarded by the Tribunal at Rs.12,71,500/- is enhanced to Rs.15,71,400/-.

17. Learned counsel for respondent transport corporation submitted that the entire compensation awarded by the Tribunal was deposited and it was also withdrawn by the appellants/claimants.

18. The respondent transport corporation is directed to deposit the enhanced compensation of Rs.2,99,900/- together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period



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of six weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.2,99,900/- is concerned, the appellants/claimants will not be entitled for interest for the period of delay of 464 days as was ordered by this Court in C.M.P.No.5317 of 2024 in CMA SR.No.27656 of 2024, dated 03.04.2024. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is allowed in the above terms. No costs.

25.04.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

The Motor Accident Claims Tribunal,
IV Court of Small Causes,
Chennai.

N.ANAND VENKATESH, J.

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