



C.M.A. No. 2556 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.2556 of 2021

1. Padmavathi
2. Sowndharya
3. Muthuvel ... Appellants / Petitioners

Vs.

1. Duraisamy
2. Raja
3. The United India Insurance Co. Ltd.,
Divisional Office: 170900,
No.2, Dr. Sankaran Road,
Namakkal - 637 211. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order dated 19.01.2021 passed in M.C.O.P. No.1703 of 2019 on the file of Special District Judge, Motor Accident Claims Tribunal, Salem.

For Appellants : M/s. C. Paraneedharan

For RR 1 & 2 : No Appearance

For R3 : M/s. D. Bhaskaran



C.M.A. No. 2556 of 2021

JUDGMENT

WEB COPY

This Civil Miscellaneous appeal has been filed by the claimants challenging the contributory negligence fixed on the deceased Udhayakumar, for the accident taken place on 19.11.2018 and seeking enhancement of compensation awarded in passed in M.C.O.P. No.1703 of 2019, dated 19.01.2021 on the file of Special District Judge, Motor Accident Claims Tribunal, Salem.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 19.11.2018, at about 09:30 AM, the deceased Udhayakumar was riding a two wheeler bearing Registration No.TN-28-AW-9023 along with one Ganesan on Salem - Karur Highway, while they reached near Association Petrol Bunk, a Tanker lorry bearing Registration No.TN-28-BC-3380, driven by its driver in a rash and negligent manner, came behind and dashed the two wheeler of the deceased, thereby causing instantaneous death to the deceased and serious injuries to the pillion rider. A criminal case was registered against the driver of the Tanker lorry in



C.M.A. No. 2556 of 2021

Cr.No.588/2018 on the file of Velur Police station, Namakkal district. For the loss of deceased Udhayakumar, the legal heirs of the deceased has come forward with claim petition seeking compensation for a sum of Rs.25,00,000/- by invoking section 166 of the Motor Vehicles Act, 1988.

4. The first, second and third respondents are the driver, owner and insurer of the Tanker lorry, respectively. The first and second respondent has not contested the claim and remained ex-parte. The third respondent - insurance company has filed a counter, disputing the manner in which the accident has taken place and contended that the rash and negligent act of the deceased has contributed to the accident and further disputed the age, income and occupation of the deceased. The insurance company also contended that the deceased has failed to wear protective headgear and also driven the two wheeler without valid driving licence. Further contended that the first respondent has no valid driving licence and the compensation claimant is also on the higher side.

5. The Tribunal after considering the evidence placed on record has held that the deceased Udhayakumar has also contributed to the accident



to the extent of 20% and quantified the compensation and awarded Rs.10,06,000/- along with interest @ 7.5% per annum from the date of filing petition till the date of realization and also held that the second and third respondent are jointly and severally liable to pay compensation to the first claimant herein.

6. Aggrieved over the contributory negligence fixed on the deceased and for enhancement of compensation, the claimants have filed this appeal. The respondents has not preferred any appeal against the award.

7. The learned counsel for the claimants submitted that the contributory negligence has been fixed on the deceased without any evidence and the respondents have also not produced any evidence disputing the evidences on the side of the claimants. He further submitted the notional income fixed by the Tribunal is on the lower side, hence prays to set aside the contributory negligence fixed on the deceased and to enhance the compensation.

8. Per contra, the learned counsel for the insurance company



submitted that the Tribunal after appreciating the evidences placed on record has rightly fixed contributory negligence on the part of the deceased. He further submitted that the claimants have examined P.W.3, to prove the income of the deceased and according to his evidence, Rs.7,500/- is paid as salary to the deceased, however the Tribunal after taking note of the same has fixed Rs.9,000/- per month as the notional income of the deceased, hence prays to confirm the award.

9. I have considered the submissions made on both sides and perused the materials available on record.

10. The Tribunal after appreciating the evidence of P.W.2, who is the pillion rider, accepted the manner in which the accident has taken place. He admitted that the deceased was not wearing helmet and died, due to the head injuries sustained. P.W.2- further stated that the deceased has entered into the National Highway without noticing the up-coming lorry, hence the Tribunal has fixed contributory negligence to the extent of 20% on the deceased. Since, there is ample evidences placed on record to show that the deceased has contributed to the accident and sustained head injuries due to



non wearing of headgear, this Court is of the view that the contributory negligence fixed by the Tribunal is proper and inclined to confirm the same.

11. With regard to quantum of compensation, the claimant have claimed that the deceased was earning Rs.12,000/- per month by working as a driver and to prove the same, they have examined P.W.3, who is an Official representative of the employer of the deceased and through him Ex.P.22 to P.25 were marked. Ex.P.22 - Appointment Order shows that the deceased was earning a sum of Rs.7,500/- during the course of his appointment and according to the learned counsel for the claimants, the Tribunal taken note of Ex.P.22 and fixed Rs.9,000/- as monthly notional income of the deceased, which is not in accordance with the norms followed by this Court in fixing notional income for the persons of similar category. On close scrutiny of Ex.P.22 and P.23 and the award, the Tribunal has not fully accepted the evidence of P.W.3 since no other document showing the actual income of the deceased is marked, hence fixed monthly notional income of Rs.9,000/- on the deceased. This Court considering the age, avocation and date of accident, the notional income fixed by the Tribunal is proper and the same requires no modification, accordingly, the



compensation awarded under the head loss of income is hereby confirmed.

WEB COPY

12. The compensation of Rs.15,000/- each awarded under the conventional heads of funeral expenses and loss of estate is hereby confirmed. However, the Tribunal has awarded Rs.40,000/- under the head loss of consortium to the first claimant alone, as per the Hon'ble Apex Court in *Magma General Insurance Co. Ltd., vs Nanu Ram [2018 ACJ 2018]*, all the claimants are entitled to consortium. Hence, this Court is inclined to grant the claimants, consortium of Rs.40,000/- each to the wife, daughter and son of the deceased Udhayakumar as per the Apex Court Judgment cited supra.

13. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of income (after deducting contributory negligence of 20%)	9,36,000/-	9,36,000/-	Confirmed
2.	Loss of consortium	40,000/-	1,20,000/-	Enhanced



C.M.A. No. 2556 of 2021

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total Compensation	10,06,000/-	10,86,000/-	Enhanced

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,06,000/- is hereby enhanced to **Rs.10,86,000/- [Rupees Ten Lakh Eighty Six Thousand only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The third respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P. No.1703 of 2019 on the file of the Special District Judge, Motor Accidents Claims Tribunal, Salem. On such deposit, the first claimant, who is the wife of the deceased is permitted to withdraw the award amount determined by this Court along with interest and costs, less the amount if any, already withdrawn and the second and third claimants, who are the daughter and son of the deceased,



C.M.A. No. 2556 of 2021

respectively are entitled to Rs.40,000/- each as loss of consortium, as far as other aspects are concerned, the award of the Tribunal is confirmed. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

23.02.2024

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special District Judge,
Motor Accident Claims Tribunal,
Salem.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

K. RAJASEKAR, J.

stn



WEB COPY



C.M.A. No. 2556 of 2021

C.M.A. No. 2556 of 2021

23.02.2024