



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1229 of 2024

1.P.Tharagai

2.Minor G.T.Rithan (Rep. by his NFG/Mother Tharagai)

3.M.Saraswathi

4.D.Manir

..Appellants

.VS.

1.M/s.Karthik Agencies

No.8, 3rd Cross, Co-operative Colony,
Krishnagiri District - 635 001.

2.M/s.National Insurance Company Limited,
3rd Floor, Anuradha Complex, Bangalore Road,
Krishnagiri District,
No.74-A, Paramathi Road,
Namakkal Town.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to enhancement of the compensation in the Judgment and decree dated 01.03.2021 made in MCOP No.592 of 2019, on the file of MACT/Principal District Court, Namakkal.



For Appellants : Mr.M.Lokesh

For Respondents : Ms.R.Sree Vidhya for R2

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JUDGMENT

The claimants not being satisfied with the quantum of compensation awarded by the Tribunal in MCOP No.592 of 2019, dated 01.03.2021 have filed this appeal seeking for enhancement of compensation.

2.The deceased Gowtham was riding a two wheeler on 27.03.2018 towards his residence and at about 11.30 p.m., the offending vehicle which was a lorry was driven in a rash and negligent manner and it hit the two wheeler. As a result of which, the deceased sustained multiple injuries on his head and all over the body and he died on the spot. The deceased was aged about 28 years at the time of an accident. An FIR came to be registered in Crime No.44 of 2018 against the driver of the offending vehicle. It is under these circumstances, the claim petition came to be filed before the Tribunal 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 only due to the rash and negligent driving on the part of the driver of the lorry. Having rendered such a finding, the Tribunal took into



consideration the fact that the deceased was not having a valid driving license and he was also not wearing the helmet at the time of accident and the autopsy report showed that the death was due to shock and haemorrhage due to the head injury and the injuries to the vital organs. In view of the same, the Tribunal proceeded to fix 20% contributory negligence on the part of the deceased and fixed only 80% liability on the respondents.

4.The Tribunal fixed the total compensation at Rs.26,40,400/- under various heads as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Dependency (Rs.12,600/- x 12 x 17)	25,70,400
2.	Loss of Estate	15,000
3.	Funeral Expenses	15,000
4.	Loss of Consortium	40,000
	Total	26,40,400
	Deduct 20% contributory negligence is Rs.5,28,080/-	21,12,320

5.Out of the above compensation, 20% was deducted towards contributory negligence and the balance 80% to the tune of Rs.21,12,320/- was directed to be paid with interest at the rate of 7.5% per annum.



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6.The claimant aggrieved by the contributory negligence fixed on the deceased and also the quantum of compensation fixed by the Tribunal, have filed the present appeal.

7.Heard Mr.M.Lokesh, learned counsel appearing on behalf of the appellants and Ms.R.Sree Vidhya, learned counsel appearing on behalf of the 2nd respondent.

8.This Court has carefully considered the submissions made on either side and also the materials available on record.

9.The Tribunal on appreciation of evidence rendered a clear finding that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. In view of the same, the mere fact that the deceased was not possessing the driving licence, cannot result in attributing contributory negligence against the deceased and the law on this issue is now too well settled. Insofar as non-wearing of the headgear, it is seen that the death had taken place due to the shock and haemorrhage as a result of the head injury. Therefore, if the deceased had worn a helmet, the scenario would have been different. In view of the same, this Court is inclined to reduce the contributory negligence from 20% to 10% and the Award passed in this regard by the Tribunal stands modified.



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10.The Tribunal has fixed the notional monthly income of the deceased at Rs.12,600/- In the present case, the deceased had completed B.E., and he was also having a Diploma for Mechanical Engineering. The claimants came up with a case that the deceased was working as an Engineer in a private concern and was earning a sum of Rs.30,000/- per month. However, there was no evidence before the Tribunal either for working in the private concern or for the income earned by the deceased. Therefore, the Tribunal proceeded to fix the notional monthly income. The only question is as to whether the notional monthly income fixed by the Tribunal is reasonable.

11.Considering the educational qualification of the deceased and his age, this Court is inclined to fix the notional monthly income at Rs.17,500/-. 40% can be added towards future prospects and thereby, the compensation under the head of loss of dependency is calculated as $\text{Rs.}24,500 \times 12 \times 17 \times \frac{1}{4} = \text{Rs.}37,48,500/-$

12.The Tribunal has granted only a sum of Rs.40,000/- under the head of 'Loss of Consortium'. This is on the lower side and each of the claimant is entitled for a sum of Rs.40,000/- under this head. Accordingly, the total compensation under this head is fixed at Rs.1,60,000/- (Rs.40,000/- x 4). The compensation fixed under the others heads are reasonable and it does not require the interference of this Court.



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13. In the light of the above discussion, the compensation awarded by the tribunal is modified as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Dependency (Rs.24,500/- x 12 x 17 x 1/4)	37,48,500
2.	Loss of Estate	15,000
3.	Funeral Expenses	15,000
4.	Loss of Consortium	1,60,000
	Total	39,38,500
	After deducting 10% contributory negligence Rs.3,93,850	35,44,650

14. The compensation awarded by the tribunal at 21,12,320/- is enhanced to Rs.35,44,650/-. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.35,44,650/-, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.14,32,330/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay period of 673 days as was ordered by this Court in C.M.P.No.8173 of 2024, dated 30.04.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid



by the claimants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered subject to the only modification that out of the enhanced compensation of Rs.14,32,330/-, a sum of Rs.10 Lakhs shall go in favour of the 1st claimant who is the wife and the balance shall go in favour of the 2nd claimant who is the minor in this case.

15.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

12.06.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

The MACT/Principal District Court, Namakkal.



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N. ANAND VENKATESH., J

SSR

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