IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	01.02.2024
Pronounced on	16.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

C.M.A.No.1658 of 2021

1.Raghavan
2.Satish …Appellants

Vs.

1. Satish
2. The New India Assurance Co. Ltd.,
   No.232, Bombay Mutual Building,
   NSC Bose Road, Parrys, Chennai-1 …Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the judgment and decree dated 16.10.2019 in M.C.O.P.No.3574 of 2018 on the file of the Motor Accidents Claims Tribunal (Chief Judge, Small Causes Court), Chennai.

For Appellants : Mr.R.Nalliyappan
For Respondents : Mr.S.R.Sumathy for R2
No Appearance for R1

JUDGMENT

The above Civil Miscellaneous Appeal is directed against the judgment and decree dated 16.10.2019 in M.C.O.P.No.3574 of 2018 on the file of the Motor Accidents Claims Tribunal (The Chief Judge, Small Causes Court), Chennai.

2. Shortly stated, on 12.02.2018 at about 13.50 hours, the deceased was travelling as a pillion rider on a motorcycle bearing Registration No.TN 10 AW 5136 in Nungambakkam Kodambakkam High Road near Valluvarkottam, at that time, the thuppatta was got into the back wheel of the motorcycle, due to which the deceased fell down from the vehicle and sustained fatal injuries.

3.Accordingly, the claim for compensation for a sum of Rs.72,00,000/- has been made by the legal heirs of the deceased.

4. The 2nd respondent/Insurance Company alleged that the deceased

was solely responsible for the accident. Therefore, the respondents are not responsible for the accident.

5. Accordingly, the Tribunal framed following points for consideration:-

> *1.Whether the accident had occurred due to rash and negligent riding of the 1st respondent's vehicle by its driver?*
> *2.Whether the respondents are liable to pay compensation?*
> *3.Whether the petitioners are entitled to compensation as claimed in the petition?*

6. The Tribunal came to the conclusion that the rider of the motorcycle was alone not responsible for the accident and the deceased had also contributed to the accident. Hence, the Tribunal found that the pillion rider as well as the motorcycle rider was responsible for the accident and fixed the liability at the ratio of 50:50 respectively and held that the claimants are entitled to claim compensation jointly and severely from the owner and insurer of the offending vehicle. The compensation of Rs.4,81,730/- has been awarded carrying interest at the rate of 7.5% per annum. Aggrieved by this,

the present appeal is preferred by the claimants.

7. Through this appeal, award has been challenged on the ground that the Tribunal erred in fixing 50% of Contributory Negligence on the part of the deceased, eventhough the accident took place due to the rash and negligent driving of rider of the motorcycle. If the rider of the motorcycle has driven the vehicle slowly, accident would not happened, therefore, fixing 50% of contributory negligence is unreasonable. The claimants are the husband and son of the deceased and the compensation awarded under the head loss and affection is very low. It is further submitted that the Tribunal has erroneously deducted the medical bills claimed under the Mediclaim Policy, since the policy was purchased under the private agreement with the Mediclaim Insurance Company by paying concerned charges. Under such circumstances, it is not correct to deduct the medical expenses which has been reimbursed through Mediclaim Policy. It is further contended that the Tribunal failed to award any amount under the head of Transportation, Consortium and loss of Estate and Mental agony caused to the appellants. The further submission is that very meager amount under the head of Funeral Expenses and Love and

affection have been awarded by the Tribunal. In the above circumstances, the appellants/claimants prays for enhanced compensation.

8. No doubt, it is admitted fact that at the time of the accident, the offending vehicle namely, the motorcycle bearing Registration No. TN 10 AW 5136 did not have a Saree guard, that made the thuppatta of the deceased to get into inserted into the back wheel of the said vehicle. So, it cannot be said that the deceased was solely responsible for the alleged accident. At the same time, the negligence on the part of the deceased cannot be ruled out. If she had been careful, the accident would not have occurred. However, fixing 50% Contributory Negligence on the part of the deceased is unreasonable. Therefore, considering the facts and circumstances, this Court deems it fit that 25% of Contributory Negligence on the deceased. Accordingly, 25% percent alone fixed as Contributory Negligence on the deceased.

9. The further contention of the learned counsel for the appellants/claimants is that the Tribunal erred in deducting the medical bills which has been claimed under the Mediclaim Policy for the reason that the

policy was purchased under the private agreement with the Mediclaim Insurance Company by paying certain charges. Hence, it is not correct to discount the medical expenses, which has been reimbursed through the Mediclaim Policy.

10. To support his contention, he relied upon the decision cases reported in ***Xavier Arockiya Dass Vs. A.Malaichamy [2024 (1) TN MAC 99]*** in which it is held that the amount received under the Mediclaim Policy is not liable to be deducted.

11. On the other hand, the learned counsel appearing for the respondent/Insurance Company would contend that the amount paid by Insurance Company under Mediclaim policy is deductable from compensation in Motor Accident Claim. The Tribunal has rightly deducted the same. The compensation awarded by the Tribunal under other heads are reasonable which requires any interference.

12.In this regard, the Hon'ble Division Bench of this Court has held that the compensation for medical expenses is a matter of reimbursement and hence, once the Insurance Company has chosen to compensate the victim of road accident for medical expenses, the same cannot be claimed once again under the Motor Vehicle's Act. In ***New India Assurance Company Limited vs. Shri Manish Gupta*** reported in ***2013 AAC 2330 (KAR).***The Hon'ble Division Bench of the Karnataka High Court also held that the amount received by the claimant under the Mediclaim policy is required to be deducted from the total compensation awardable to the claimants under the head medical expenses. The Tribunal, therefore, has rightly deducted the amount received by the claimants under the Mediclaim policy and awarded the balance amount incurred as medical expenses.

13.In the impugned award the claimant failed to award compensation for loss of spousal consortium and for loss of parental consortium as per the Magma General Insurance case reported in ***AIR Online 2018 SC 1249*** for the claimants who are the husband and son of the deceased. At the same time, no amount can be awarded under loss of love and affection. The claimants are entitled for compensation towards loss of estate.

14. The compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of future dependency	8,64,000	8,64,000	Granted
2.	Funeral Expenses	15,000	15,000	Granted
3.	Loss of love and affection	20,000		Set aside
4.	Medical Expenses	64,427	64,427	Confirmed
5.	Loss of spousal consortium		40,000	Granted
6.	Loss of Parental consortium	-	40,000	Granted
6.	Loss of Estate	-	15,000	Granted
5	**Sum**	**9,63,427**	**10,38,427**	
	Less : contributory negligence	**4,81,714(50%)**	**7,78,820(25%)**	
	Total	**4,81,713**	**7,78,820**	**Enhanced by Rs.2,97,107**

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,81,713/- is hereby enhanced to Rs.7,78,820/- together with interest at the rate of 7.5% per annum

from the date of petition till the date of deposit. The appellants are directed to pay the Court fee, if any on the enhanced amount of compensation. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined 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. On such deposit, the 1st appellant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn. No costs.

16.02.2024

mac/vsn

Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order

K.GOVINDARAJAN THILAKAVADI, J.

mac/vsn

To

1. The Motor Accidents Claims Tribunal,

The Chief Judge, Small Causes Court), Chennai.

2. The Section Officer,
   VR Section,
   High Court, Madras.

Pre-delivery Judgment made in

C.M.A.No.1658 of 2021

16.02.2024