



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1391 of 2024

1.Venkatamma

2.Mani

3.Krishnaveni

..Appellants

.VS.

1.N.Sabapathy

2.The Branch Manager,
The Oriental Insurance Co., Ltd.,
Extension Centre, 2nd Floor,
Vijaya Shopping Complex,
2/7-16, Bangalore Main Road,
Zuzuvadi Post.
Hour – 635 109.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award in judgment and decree dated 14.02.2022 made in MCOP No.963 of 2020 on the file of the Motor Accident Claims Tribunal and Special District Court, Krishnagiri.

For Appellants : Mr.S.P.Yuvaraj

For Respondents : Ms.R.Sreevidhya for R2



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JUDGMENT

The claimants not being satisfied with the quantum of compensation awarded by the Tribunal in MCOP No.963 of 2020, dated 14.02.2022 has filed this appeal seeking for enhancement of compensation.

2.The claimants are the father, mother and sister of the deceased Sivakumar. The case of the claimants is that on 20.08.2019, the deceased Sivakumar was riding his two wheeler from Kelamangalam to Denkanikottai and at about 16.30 hours, the offending vehicle belonging to the 1st respondent was driven in a rash and negligent manner and as a result of which, it dashed on the two wheeler and the deceased sustained serious injuries. Unfortunately he succumbed to the injuries on the same day. An FIR came to be registered against the driver of the offending vehicle in Crime No.203 of 2019. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for enhancement 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 categoric conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. Having rendered such a finding, the Tribunal attributed 10% contributory negligence against the deceased on the ground that he



was not possessing a valid driving license.

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4.The Tribunal thereafter proceeded to fix the total compensation at Rs.14,90,800/- under various heads as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Dependency	13,60,800
2.	Loss of Estate	15,000
3.	Funeral Expenses	15,000
4.	Loss of Consortium (Rs.40,000 x 2 + 20000)	1,00,000
	Total	14,90,800

5.Out of the above compensation, a sum of Rs.13,41,720/- (90%) was directed to be paid with interest at the rate of 7.5% per annum.

6.The claimant not being satisfied with the quantum of compensation awarded by the Tribunal and also aggrieved by attributing 10% contributory negligence on the deceased, have filed the present appeal before this Court seeking for enhancement of compensation.

7.Heard Mr.S.P.Yuvaraj, learned counsel appearing on behalf of the appellant

<https://www.mhc.tn.gov.in/judis>



and Ms.R.Sreevidhya, learned counsel appearing on behalf of the 2nd respondent.

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

9.The first issue pertains to the contributory negligence attributed against the deceased. The Tribunal on appreciation of the evidence of PW2 and RW1 and Exs.P1, R2 and R3, came to a clear conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. Having rendered such a finding, the Tribunal found that the deceased was not possessing a valid driving licence. On that ground, 10% contributory negligence was attributed against the deceased.

10.It is now a settled law that a person not possessing a driving licence by itself is not a ground to attribute contributory negligence. There must be some material to show that the deceased had in fact contributed some negligence on his part towards the accident. Useful reference can be made to the judgement of the Apex Court in ***Dinesh Kumar vs. National Insurance Company Limited and Others*** reported in ***2018 1 SCC 750***.



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11. In view of the above, this Court holds that the Tribunal after giving a categorical 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, could not have attributed contributory negligence against the deceased only on the ground he did not possess a valid driving license. Every violation of the act and rules will not result in contributory negligence and this has to be kept in mind by the Tribunal when deciding a motor accident case. Accordingly, the finding given by the Tribunal attributing 10% contributory negligence is hereby set aside.

12. The next issue pertains to the notional monthly income fixed by the Tribunal. The accident had taken place in the year 2019 and the deceased was aged about 20 years. Hence, this Court is inclined to fix the notional monthly income at Rs.13,000/-. Considering the age of the deceased, 40% can be added towards future prospects. Thus, the compensation under the head of 'Loss of Dependency' is calculated as follows:

$$\text{Rs.13,000} + 40\% (\text{Rs.5200}) = \text{Rs.18200/-} + 50 / 100 = \text{Rs.9100/-}$$

13. The Tribunal had granted a sum of Rs.1,00,000/- under the head of 'Loss of Consortium'. This Court is inclined to modify this head as 'Loss of Love and Affection' and a sum of Rs.40,000/- can be granted towards each of the claimant and



a total sum of Rs.1,20,000/- can be fixed under this head.

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14. 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.9100 x 12 x 18)	19,65,600
2.	Loss of Estate	15,000
3.	Funeral Expenses	15,000
4.	Loss of love and affection	1,20,000
	Total	21,15,600

15. The compensation awarded by the tribunal at Rs.14,90,800/- is enhanced to Rs.21,15,600/-. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.21,15,600/-, 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 four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.6,24,800/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay period of 361 days as was ordered by this Court in C.M.P.No.12068 of 2023, dated 04.06.2024. 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.

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

21.06.2024

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

To

The Motor Accident Claims Tribunal and Special District Court, Krishnagiri.



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N. ANAND VENKATESH., J

ssr

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