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Civil Miscellaneous Appeal No.1097 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1097 of 2024

1.Jayanthi
W/o.Late Thangaraj

2.Vinotha
D/o.Late Thangaraj

3.Viknesh
S/o.Late Thangaraj

... Appellants

Vs.

1.D.Ramkumar
S/o.Devadoss

2.The Branch Manager,
M/s.United India Insurance Co. Ltd.,
No.5o-A, Pallivasal Street,
Perambalur.
Policy No: 0920013120P112520734

... Respondents

[R1 remained *ex parte* in lower Court, notice may be dispensed)

Civil Miscellaneous Appeal filed under Section 173 of the Motor



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Vehicles Act, 1988, against the judgment and decree dated 27.02.2024 made in M.C.O.P.No.47 of 2022 on the file of Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellants : Mr.Sithi Fathima Samt

For Respondents : Mr.T.K.Prem Kumar,
Standing Counsel [R2]

JUDGMENT

The appellants/claimants, who are the wife and children of the deceased Thangaraj, have filed this appeal against the award passed by the Motor Accident Claims Tribunal, Principal District Judge, Perambalur, in M.C.O.P.No.47 of 2022, dated 27.02.2024.

2. The case of the claimants is that the deceased Thangaraj was travelling as a pillion rider in a two wheeler on 05.07.2021 at Perambalur - Thuraiyur National Highways. At about 11.00 a.m., when the vehicle was proceeding in front of Kurumabalur Palayam SSS water service, the offending vehicle, a lorry, which was also proceeding in the same direction, was driven in a rash and negligent manner and it dashed the two wheeler, as a result of which the deceased was thrown out of the



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 offending vehicle as well as the rider of the two wheeler, in which the deceased was travelling as a pillion rider. Accordingly, the Tribunal fixed 70% negligence on the driver of the offending vehicle and 30% negligence on the rider of the two wheeler. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.21,86,464/- under various heads as follows:

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



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Sl. No.	Compensation awarded under the head	Amount (in Rs.)
5.	Funeral expenses	15,000/-
	Total	21,86,464/-
	Less: 30% contributory negligence	6,55,939/-
	Compensation payable	15,30,525/-

The above compensation was directed to be paid by the second respondent insurance company along with interest at 7.5% p.a.

4. The appellants/claimants, not being satisfied with the quantum of compensation and also attributing 30% contributory negligence against the rider of the two wheeler, have filed this appeal seeking enhancement of compensation.

5. Heard Mr.Sithi Fathima Samt, learned counsel for appellants/claimants and Mr.T.K.Prem Kumar, learned Standing Counsel for second respondent insurance company.

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



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

8. The first issue that has to be considered by this Court is with regard to the 30% contributory negligence that was attributed against the rider of the two wheeler in which the deceased was travelling as a pillion rider. In the instant case, the evidence of PW-2 and XW-1 assumes significance. PW-2 is said to be an eye witness to the accident. XW-1 was the assistant, who was working in the RTO, Perambalur. She was examined in order to ascertain the nature of damage sustained by the two wheeler as assessed by the Motor Vehicle Inspector.

9. The Tribunal, on a cumulative reading of the entire evidence available on record, came to a conclusion that the rider of the two wheeler had attempted to overtake the lorry and lost his balance, as a result of which, the rider of the two wheeler fell on the left side and the deceased fell on the right side and the lorry ran over his head resulting in his instantaneous demise. The Tribunal, accordingly, attributed 70%



negligence on the driver of the lorry and 30% negligence on the rider of the two wheeler.

10. Learned counsel for appellants submitted that the deceased in this case was only the pillion rider and therefore, contributory negligence attributed against the rider of the two wheeler cannot be put against the deceased. Learned counsel contended that the facts of the present case will fall within the realm of composite negligence.

11. Learned counsel, in order to substantiate her submissions, relied upon the judgments of the Apex Court in ***Pawan Kumar and another v. Harkishan Dass Mohan Lal and others [(2014) 3 SCC 590]*** and ***Khenyei v. New India Assurance Company Limited and others [(2015) 9 SCC 273]***.

12. Learned counsel for second respondent insurance company submitted that the issue regarding composite negligence is raised for the first time before this Court and it was never raised before the Tribunal. Learned counsel, therefore, submitted that at this stage, a new ground



should not be permitted to be raised and that the finding rendered by the Tribunal does not suffer from any illegality warranting interference of this Court.

13. During my tenure as a portfolio judge dealing with motor accident cases, in a large number of cases, it was found that the injured or the deceased, as the case may be, are pillion riders or passengers and whenever the Court finds that there was contributory negligence on the part of the rider or the driver of the vehicle, it was automatically put against the pillion rider or the person travelling in the vehicle as a passenger and to that extent, the compensation amount got reduced. When this case came up for hearing on 29.07.2024, this Court found that the principle of composite negligence is never being invoked in any of the cases and the focus seems to be only on contributory negligence. Therefore, this Court deems it fit to once again remind the members of bar that there are many cases where composite negligence must be invoked so that the pillion rider or the passenger in the vehicle is not deprived of the compensation for the fault of the driver or rider of the vehicle, as the case may be.



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14. The difference between contributory negligence and composite negligence was succinctly brought out by the Apex Court in the judgment in ***T.O. Anthony v. Karvarnan [(2008) 3 SCC 748]***. The relevant portions are extracted hereunder:

"6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference



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that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."

15. The above judgment of the Apex Court has been consistently followed in all the later judgments. Two such judgments, which followed the judgment of the Apex Court in ***T.O.Anthony's*** case was also cited by learned counsel for appellants.

16. In the first judgment in ***Pawan Kumar's*** case, the Apex Court went into the distinction between the principle of composite negligence and contributory negligence at paragraph No.7 of the judgment. Thereafter, the judgment in ***T.O.Anthony's*** case was followed at paragraph No.9 of the judgment.

17. The subsequent judgment in ***Khenyei's*** case elaborately dealt with the same concept and the principles were culled out at paragraph No.22 of the judgment, which are extracted hereunder:

"22. What emerges from the aforesaid discussion is as follows:

22.1. In the case of composite negligence, the plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of



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joint tortfeasors is joint and several.

22.2. In the case of composite negligence, apportionment of compensation between two tortfeasors vis-a-vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

22.3. In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/Tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of the payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/Tribunal, in the main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

22.4. It would not be appropriate for the court/Tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award."

18. It is quite clear from the above judgments that insofar as composite negligence is concerned, it refers to the negligence on the part of two or more persons where one person is injured or dies as a result of the negligence on the part of two or more wrong doers and each such wrong doer is jointly and severally liable to the injured or to the legal representatives of the deceased, as the case may be, for the entire compensation. In such cases, the injured person or the legal



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representatives of the deceased have the option of proceeding against both the tortfeasors or any one of them. The Court while dealing with such a case, determines the extent of negligence between joint tortfeasors only for the purpose of their *inter se* liability so that one may recover the same from the other after making the entire payment to the claimants. It was also made clear that it will not be proper for the Court to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, the impleaded joint tortfeasor should be left to sue the other joint tortfeasor in independent proceedings for recovering the extent to which the other joint tortfeasor is also found to be negligent.

19. In the case in hand, the deceased was admittedly a pillion rider in the two wheeler. The Tribunal, on appreciation of evidence, found that there was negligence on the part of the driver of the lorry as well as the rider of the two wheeler. Therefore, there are two tortfeasors in this case. The claimants have chosen to claim compensation as against one tortfeasor whose vehicle is insured with the second respondent. In view of the same, by applying the principle of composite negligence, the Court



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can always direct the insurance company to pay the entire compensation to the claimants and recover the amount to the extent of negligence that was found against the other tortfeasor.

20. Learned counsel for second respondent insurance company submitted that the evidence of PW-2 makes it clear that the deceased was not wearing a helmet in this case and the lorry ran over the head of the deceased. Therefore, it was contended that some amount of negligence must be attributed against the deceased also.

21. The evidence on record shows that the deceased fell on the right side and the lorry ran over his head. Therefore, even if the deceased had worn a helmet, his head would have been crushed with the helmet. In other words, wearing or not wearing a helmet would not have really made any difference considering the manner in which the accident has taken place in this case. Therefore, this Court is not inclined to fix any contributory negligence on the part of the deceased.

22. In the light of the above discussion, while sustaining the finding



of the Tribunal regarding fixation of 70% negligence on the part of the driver of the lorry and 30% on the part of the rider of the two wheeler, this Court directs the entire compensation amount to be paid by the second respondent insurance company to the claimants and it will be left open to the second respondent insurance company to recover 30% of the compensation amount with interest from the rider/owner of the two wheeler/insurance company in which the two wheeler is insured.

23. The next issue is with regard to the quantum of compensation fixed by the Tribunal.

24. In the considered view of this Court, except the compensation awarded under the head 'loss of love and affection', the quantum that has been fixed under the other heads are very reasonable. Insofar as the compensation awarded under the head 'loss of love and affection' is concerned, this Court finds that the Tribunal has fixed a sum of Rs.40,000/- under the head 'consortium' and Rs.40,000/- under the head 'parental consortium'. Both these heads can be consolidated under a single head 'loss of love and affection' and this Court is inclined to fix a sum of



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Rs.1,20,000/- [40000*3] under this head.

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25. For the foregoing reasons, the compensation awarded by the Tribunal is modified as follows:

<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	20,76,464/-	20,76,464/-
2.	Consortium	40,000/-	-
3.	Parental consortium	40,000/-	-
4.	Loss of estate	15,000/-	15,000/-
5.	Funeral expenses	15,000/-	15,000/-
6.	Loss of love and affection	-	1,20,000/-
	Total	21,86,464/-	22,26,464/-
	Less: 30% contributory negligence	6,55,939/-	-
	Compensation payable	15,30,525/-	22,26,464/-

26. The compensation awarded by the Tribunal at Rs.15,30,525/- is enhanced to Rs.22,26,464/-. The second respondent insurance company



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is directed to deposit the compensation awarded by this Court, 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 (6) weeks from the date of receipt of this judgment. On such deposit, the appellants/claimants are entitled to withdraw their respective share with interest on due application. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants.

27. It is left open to the second respondent insurance company to recover 30% of the compensation from rider/owner of the two wheeler/insurance company in which the two wheeler is insured.

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

01.08.2024

Speaking Judgment

Index :Yes

Neutral citation: Yes

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N.ANAND VENKATESH, J.

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The Motor Accident Claims Tribunal,
Principal District Judge,
Perambalur.

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