



WEB COPY



C.M.A.No.904 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.904 of 2023

1. Jenifer
W/o Sathishkumar @ Stephen Sathishkumar
2. Sathishkumar @ Stephen Sathishkumar
S/o Shanmugam ... Appellants

Vs.

1. G.Nathiya
D/o Ganesan
2. National Insurance Co.Ltd.,
Third Party Cell HUB,
No.46, Regina Mansion,
Moore Street, Parrys,
Chennai - 600 001. ... Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 06.01.2022 and made in M.A.C.T.O.P.No.2827/2018 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.



C.M.A.No.904 of 2023

WEB COPY

For Appellants : Ms.A.Subadra

For Respondents : R1-exparte.

Mr.S.Senthilkumar for R2

JUDGMENT

*(Judgment of the Court was delivered by **J. Nisha Banu, J**)*

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 06.01.2022 made in M.C.O.P.No.2827 of 2018 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2.The appellants are claimants in M.C.O.P.No.2827 of 2018 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai. They filed the said claim petition claiming a sum of Rs.75,00,000/- as compensation for the death of their son, Leander, who died in the accident that took place on 10.03.2018.

3. The claim petition has been fled stating that on 10.03.2018, at about 1.30 a.m., while the deceased was riding in a Motor cycle bearing Registration TN-11-AD-1887 in front of bridge, Perumalcherry, ECR



C.M.A.No.904 of 2023

WEB COPY

from Pondicherry towards Chennai, in a careful and cautious manner following road and traffic rules, at that time, a Lorry bearing Registration No.TN-28-AA-9676 which belonged to the 1st respondent proceeded on the same road in the opposite direction from Chennai to Pondicherry in a rash and negligent manner and dashed against the deceased Motor cycle. Due to which, the deceased was thrown out and sustained multiple grievous injuries all over the body and died, despite treatment. The driver of the first respondent is solely responsible for the accident. The 1st respondent, being the owner and the 2nd respondent, being the insurer of the said vehicle are vicariously and statutorily liable to pay compensation with costs and interest to the claimants from the date of accident.

4. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Lorry belonging to the 1st respondent and since the deceased was having learner license and was not holding a valid driving licence, he had contributed for the accident and fixed 85 : 15 contributory negligence on the part of the 1st respondent/owner of the lorry as well as the deceased and awarded a sum of Rs.19,87,300/- as



C.M.A.No.904 of 2023

compensation to the 1st appellant and directed the 2nd respondent/Insurance Company, being the insurer of the said lorry, to pay the said sum.

5. Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

6. The learned counsel appearing for the appellants/claimants contended that admittedly, no evidence was adduced by the respondents to prove the negligence on the part of the deceased. Learned counsel would further state that the Tribunal failed to consider the evidence of P.W.1 and P.W.2 and relied upon the evidence of the Insurance Company as there was no license for the deceased. He would state that the eye witness had stated that he followed the deceased in his two wheeler at the time of accident and the accident was attributed by the vehicle of the 1st respondent.

7. Learned counsel would further state that at the time of accident the deceased was aged 19 years and studying 2nd year Engineering at



C.M.A.No.904 of 2023

AMIT Engineering College, Kanthur and also doing part time job and earning about Rs.20,000/- per month. The deceased was a brilliant student and got placement at Sea Team Management Private Limited (Singapore based Shipping Company) and to prove the same Exs.P8 to P12 and Ex.P15 were marked. However, the Tribunal without considering the same, fixed the notional income of the deceased as Rs.15,000/- per month. He would further state that the Tribunal ought to awarded more compensation under the head of loss of dependency, loss of estate, loss of love and affection, funeral expenses and future prospects and also proper multiplier was not applied by the Tribunal.

8. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the deceased was riding the motor cycle without driving license and without wearing helmet at the time of accident. The Tribunal, after considering all the materials available on record, has awarded the compensation. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.



C.M.A.No.904 of 2023

WEB COPY

9. Heard the learned counsel appearing for the appellants as well as the 2nd respondent/Insurance Company and perused the entire materials available on record.

10. It is the contention of the appellants that the deceased was aged 19 years at the time of accident and was doing part time job, earning a sum of Rs.20,000/- per month. Ex.P8 to P12 & Ex.P14 would show the academic and extra curricular excellence of the deceased. Ex.P15 is the copy of the certificate showing that the deceased was selected for Sea Team Management Pvt.Ltd. (Singapore based shopping company) during campus recruitment in AMET Engineering College held on February 2018. The deceased was having learning license. It is not that only the person who does not possess driving licence may cause the accident. The deceased died due to abdominal injuries sustained by him. On perusal of Ex.P1, it is seen that the driver of the lorry came in a rash and negligent manner and dashed against the two wheeler of the deceased. No evidence was examined to establish that the deceased drove the vehicle in a rash and negligent manner. Therefore, we are of the opinion that 15% contributory negligence attributed on the deceased for the cause of



WEB COPY

accident is not proper. We also find that the compensation awarded on others heads are just and reasonable and we are not inclined to interfere with the same. Only in respect of contributory negligence alone, the award of the Tribunal is modified. Thus, 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 dependency	22,68,000	22,68,000	Confirmed
2.	Loss of estate	15,000	15,000	Confirmed
3.	Loss of love and affection	40,000	40,000	Confirmed
4.	Funeral expenses	15,000	15,000	Confirmed
	Total	Rs.23,38,000/- (less 15% contributory negligence of the deceased) i.e.,23,38,000-3,50,700= Rs.19,87,300	Rs.23,38,000/-	Enhanced by Rs.3,50,700/-

11. The 1st appellant is the mother and the 2nd appellant is the father of the deceased. If the deceased died as a bachelor as per *Sarala Verma case*, mother alone is entitled for compensation. Thus, the 1st appellant/mother of the deceased alone is entitled for compensation.



C.M.A.No.904 of 2023

WEB COPY

12. In all, the 1st appellant/1st claimant is entitled to the enhanced compensation of Rs.23,38,000/- (Rupees Twenty Three Lakhs Thirty Eight Thousand only) with interest at the rate of 7.5% p.a. from the date of the claim petition till the date of realisation.

13. In the result,

i) The Civil Miscellaneous Appeal is partly allowed.

ii) The 1st appellant/ 1st claimant is entitled to the enhanced compensation amount of Rs.23,38,000/- (Rupees Twenty Trhee Lakhs Thirty Eight Thousand only) along with interest @ 7.5% per annum from the date of claim petition till the date of realisation.

iii) The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.23,38,000/- (Rupees Twenty Three Lakhs Thirty Eight Thousand only) with interest at the rate of 7.5% p.a. from the date of the claim petition till the date of deposit after deducting the amount, if any, already deposited within a period of six weeks from the date of receipt of a copy of this judgment.



C.M.A.No.904 of 2023

WEB COPY

iv) On such deposit, the 1st appellant/1st claimant is permitted to withdraw the same along with interest and costs.

v) The 1st appellant is directed to pay the necessary court fee on the enhanced award amount, if any.

(J.N.B, J.) (R.S.V., J.)
12.11.2024

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

To

The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.



WEB COPY



C.M.A.No.904 of 2023

J. NISHA BANU, J.
and
R. SAKTHIVEL, J.

vsi

C.M.A.No.904 of 2023

12.11.2024