



C.M.A.No.3094 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 05.02.2024	Pronounced on 20.02.2024
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3094 of 2021

1.Santhiya
W/o.Pradhab

2.Pradhab
S/o.Balasubramani

Both residing at Paravaikadu
Karuppur Post
Omalur Taluk
Salem District

... Appellants

Vs.

1.Senthilkumar
S/o.Chinnapaiyan
No.3/66, Periyakadampatty, Sikampatty Post
Omalur Taluk
Salem District

2.United India Insurance Company Limited
Divisional Office
104/A, Peramanur Road
Salem 636 007

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Award passed in MCOP.No.695 of 2017 (on the file of Special



C.M.A.No.3094 of 2021

District Judge, MCOP Tribunal, Salem) dated 26.02.2021.

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For Appellants : Mr.J.Prithivi

For Respondents : Mr.D.Shivakumaran (for R1)
Mr.S.Arunkumar (for R2)

J U D G M E N T

The Appeal has been filed against the Judgment and Award passed in MCOP.No.695 of 2017 (on the file of Special District Judge, MCOP Tribunal, Salem) dated 26.02.2021.

2.The claim Petitioners are the Appellants herein and they filed this Appeal, seeking enhancement of compensation awarded in MCOP.No.695 of 2017 (on the file of Special District Judge, MCOP Tribunal, Salem). For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The legal representatives of the deceased Prithihasan filed MCOP.No.695 of 2017 (on the file of Special District Judge, MCOP Tribunal, Salem), seeking compensation and filed this Appeal on the ground of contributory negligence and quantum.



C.M.A.No.3094 of 2021

WEB COPY

4.The claim Petition was filed by the claim Petitioners for the death of their minor child, who is two years old in a road transport accident occurred on 29.12.2016. In the claim Petition it is specifically stated that on 29.12.2016 at 4.00 pm the deceased Prithihasan was just standing near the SVT briklin factory at Moolakadai. At that time the 1st Respondent's 909 tempo bearing Reg. No.TN 54 C 7221 was parked at the briklin factory to load the bricks and after loading, the driver suddenly moved the vehicle on the reverse side without giving any signal. Due to that the tempo wheel ran over the boy and he had sustained severe injuries all over the body. Immediately he was admitted in the Manivannan hospital at Omalur and then shifted to the Salem GH for further treatment but he died on the course of treatment.

5.Before the trial Court, the owner of the vehicle remained exparte and the Insurance Company filed counter statement denying various allegations and contended that on the date of the accident, the driver of the vehicle does not posses valid driving license to drive the heavy vehicle.



C.M.A.No.3094 of 2021

WEB COPY

6. During the trial, on the side of the claim Petitioners, PW1 was examined & Ex.P.1 to Ex.P.6 were marked and on the side of the Respondents, RW1 & RW2 were examined, Ex.R1 & Ex.R2 were marked and Ex.C1 & Ex.C.2 were marked as Court documents.

7. Heard the learned counsel appearing on behalf of the claim Petitioners and the learned counsel appearing on behalf of the Insurance Company.

8. On considering the oral and documentary evidences the Tribunal has come to the conclusion that had the parents have taken due care in keeping the boy, the accident could not have been occurred. Further the Tribunal came to the conclusion that had the driver have exercised due care while taking reverse, the accident could have been avoided and accordingly fixed contributory negligence at 50% each on either sides viz., driver of the vehicle and parents.

9. The Tribunal also fixed a sum of Rs.3,000/- as monthly income of the deceased boy and added 40% towards future prospects and made $\frac{1}{2}$ deduction towards personal expenses of the deceased as the child died as a bachelor and



C.M.A.No.3094 of 2021

followed multiplier method by following the judgment of the Hon'ble Apex Court in *Sarla Verma & Others .Vs. Delhi Transport Corporation & another*, reported in **2009 (2) TNMAC 1 (SC)** and awarded a sum of Rs.2,56,800/-. Hence the Appeal by the parents.

10.Based upon Exs.C1 & C2, the Tribunal has come to the conclusion that on the date of the accident, the driver of the vehicle does not possess valid driving license to drive the heavy vehicle. Accordingly, held that there is violation of policy conditions and consequently, ordered for pay and recovery. As against the pay and recovery the lorry owner has not filed any Appeal and in fact he remained exparte before the Tribunal.

11.Ex.P.1/FIR reveals the manner of the accident. The parents of the deceased are doing cooli work in a Bricklin site and it is contended before the trial Court that the parents of the deceased child without guarding him allowed him to wander around the Bricklin site and the Tribunal fixed 50% contributory negligence on the parents of the deceased. Admittedly, there is no such evidence on record to arrive at the said conclusion. However, based on



C.M.A.No.3094 of 2021

WEB COPY

Ex.P.1/FIR and evidence of PW1/Mother of the deceased, who is also the occurrence witness this Court finds that due to the sole reason of rash and negligence on the part of the driver of the lorry alone the accident has been taken place and the driver of the lorry was not diligent, while taking reverse mode. In the absence of any contra evidence, this Court is of the considered view that the accident has taken place due to the rash and negligent driving of the driver of the lorry and there is no contributory negligence on the part of the parents and hence the finding of the Tribunal with regard to contributory negligence is hereby vacated and further held that the driver of the lorry alone is responsible for the accident and 1st Respondent/owner of the vehicle and the 2nd Respondent/insurer of the vehicle are jointly and severally liable to pay compensation to the claim Petitioners.

12.As per the evidence of RW2 coupled with Exs.C1 & C2, the Tribunal rendered a categorical finding that on the date of the accident the driver of the vehicle does not possess valid driving licence to drive the heavy vehicle and hence it amounts to violation of policy conditions and accordingly, the pay and recovery ordered by the Tribunal is hereby confirmed.



C.M.A.No.3094 of 2021

WEB COPY

13.The Tribunal has adopted multiplier method for the death of two year old boy. The Tribunal has lost sight of facts as two year old boy cannot be treated as bachelor and wrongly adopted multiplier method and added future prospects, which do not arise, in the case of minor child that too two years old child. Accordingly, the computation of compensation granted by the Tribunal is hereby set aside.

14.Taking into consideration the age of the child, being two years and the claim Petitioners, who are working as cooli in a Bricklin site, I am inclined to award a sum of Rs.2,56,000/-, as lumpsum amount to the claim Petitioners.

15.In total, the claim Petitioners are entitled to a sum of Rs.2,56,000/- (Rupees two lakh and fifty six thousand only).

16.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, fixing 100% negligence on the part of the 1st Respondent. No Costs.



C.M.A.No.3094 of 2021

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(ii) the Insurance Company is directed to deposit a sum of Rs.2,56,000/- before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order and recover the same from the first Respondent.

(iii) on such deposit being made, the claim Petitioners/Appellants are entitled to get their share, as per the ratio of apportionment made by the Tribunal. The claim Petitioners are permitted to withdraw their entire share with proportionate interest and costs, less the award amount already withdrawn, if any, by filing necessary application before the Tribunal.

(iv) the claim Petitioners are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

20.02.2024

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

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C.M.A.No.3094 of 2021

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The Special District Judge,
MCOP Tribunal,
Salem



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C.M.A.No.3094 of 2021

RMT.TEEKAA RAMAN.J,

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Pre-delivery Judgment made in

C.M.A.No.3094 of 2021

Dated: 20.02.2024