



C.M.A. No. 2240 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2240 of 2021

1. Vennila
2. Minor Ranjith
3. Minor Oviya
4. Pavayee
5. Kaliyappan ... Appellants / Petitioners

Vs.

1. Uthirakumar
2. United India Insurance Co. Ltd.,
Micro Office, Namachivayam Complex,
No.4/198, Salem Steel Plant Main Road,
Maramangalathupatty,
Salem - 636030. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 01.02.2020 passed in M.C.O.P. No. 1366 of 2018 on the file of the Special District Judge, Motor Accident Claims Tribunal, Salem.

For Appellants : M/s. S.P. Yuaraj
For R1 : No Appearance
For R2 : M/s. D. Bhaskaran



JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimants seeking enhancement of compensation and contributory negligence fixed on the deceased as per the award in M.C.O.P. No. 1366 of 2018, dated 01.02.2020 on the file of the Special District Judge, Motor Accident Claims Tribunal, Salem.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 21.06.2018, at about 1:30AM, the deceased Kanagaraj was riding a TVS Champ bearing Registration No.TN-20-0211 on the Kalipatty to Vaikundam Road, while he reached near Venkatachalam Thottam, a TATA Indica CS car bearing Registration No.TN-30-AS-3177 came in the opposite direction, driven by its driver in a rash and negligent manner, hit on the two wheeler, thereby causing grievous injuries and the deceased Kanagaraj succumbed to injuries on the same day at GMKMCH, Hospital, Salem. A criminal case was registered against the driver of the car in Cr.No.185/2018 U/s.279 and 304(A) of IPC on the file of Mallasamudram



Police station. For the loss of deceased Kanagaraj, the claimants, who are the legal heirs of the deceased filed claim petition seeking compensation for a sum of Rs.30,00,000/- under section 166 of the Motor Vehicles Act.

4. The first respondent is the owner of the car, remained ex-parte. The second respondent - insurance company is the insurer of the car filed a counter and contended that the accident was taken place only due to the rash and negligence on the part of the deceased, who without valid driving licence and head gear came at a high speed and hit on the car, thereby invited the accident. The insurance company also disputed the age, occupation and income of the deceased and contended that the compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P.1 to P.16 were marked. On the side of the respondents, R.W.1 was examined and no exhibits were marked. The copy of accident register of the deceased was marked as Court evidence in Ex.C.1.



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6. Based on the evidence, placed on record, the Tribunal in point no.1, has held that the deceased herein is also responsible for the cause of accident, hence fixed contributory negligence of 50% on the part of the deceased. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.6,30,028/- along with interest @ 7.%% per annum from the date of filing of petition till the date of realization and fixed the liability on the part of the second respondent - insurance company to indemnify the first respondent and to pay compensation to the claimants.

7. Aggrieved over the contributory negligence fixed on the part of the deceased and quantum of compensation awarded, the claimants have filed this appeal.

8. The learned counsel appearing for the claimants submitted that the Tribunal has not properly appreciated the evidence of the eye witness, which clearly shows that the driver of the first respondent alone is the tortfeasor and without any corroborative material accepted the case of the respondents from the evidence of R.W.1 that the deceased was under the



influence of alcohol, while admitted in the hospital and the same is not proper to held that the deceased has contributed to the accident, hence the same is liable to be set aside. He further submitted that the notional income fixed is on the lower side, hence prays to enhance the compensation awarded.

9. The learned counsel for the insurance company submitted that the Tribunal has fixed the contributory negligence on the part of the deceased, more particularly that the deceased was under the influence of alcohol and he was also riding the two wheeler in the wrong side of the road, which resulted in accident. He further submitted that based on the evidence placed on record, the Tribunal has awarded a just compensation, hence prays to confirm the award.

10. I have considered the submissions made on both sides and perused the materials available on record.

11. The case of the claimants is that the deceased while the deceased was riding a two wheeler on the left hand side of the road, a car



came in the opposite direction in rash and negligent manner and hit on the deceased. They have examined P.W.2, who is the eye witness to the occurrence, from the deposition of P.W.2, the Tribunal has held that the deceased had rode his vehicle from the opposite direction which is not meant for two way vehicular traffic. The respondents have examined R.W.1 - Duty Doctor, who has issued Accident Register to the deceased at the time of admitting in hospital, deposed that the deceased was under the influence of alcohol at the time of admission in the hospital after the accident. In the cross examination, he has reiterated that the level of alcohol in the deceased body is abnormal and he has recorded the same in the accident register. Based on the these evidences, the Tribunal has held that the deceased has ridden his two wheeler in the wrong side of the road without wearing head gear and was under the influence of alcohol has hit on the front side of the car and invited the accident. Hence, the Tribunal has fixed the contributory negligence of 50% on the part of the deceased.

12. On perusal of the evidences placed on record, more particularly the evidence of P.W.2 - eye witness, R.W.1 - Duty Doctor and Ex.P.2 - Post-mortem certificate of the deceased, reveals that the deceased



herein was under the influence of alcohol, came in the wrong side of the road and hit on the front side of the car, thereby invited the accident. The deceased also sustained multiple injuries on the head as per Ex.P.2- Post-mortem certificate, hence it is clear that the deceased had not wore helmet at the time of accident. Even though, the Tribunal has fixed the contributory negligence of 50% on the part of the deceased, since no appeal is filed by the insurance company, this Court is not inclined to modify the finding of the Tribunal regarding the negligent act attributed against the driver of first respondent. Similarly, the appeal is filed only by the claimants, this Court is inclined to confirm the contributory negligence of 50% fixed on the deceased by the Tribunal.

13. The next contention raised by the claimants is with respect to quantum of compensation, more particularly the notional income of Rs.8,000/- fixed on the deceased. The claimants have claimed that the deceased was working as a Powerloom worker with M/s. Kanishka Silk, Kalparapatty and was earning Rs.20,000/- per month and to substantiate the same they have examined P.W.3 - owner of the M/s.Kanishka Silks and salary certificate issued by P.W.3 as Ex.P.16. Before the Tribunal, the



P.W.3 has admitted that he have employed 30 to 40 persons for the purpose of weaving fancy sarees and used to pay Rs.20,000/- per month as salary to the weavers.

14. The Tribunal has not accepted his evidence on the ground that if P.W.3 has employed 30 to 40 weavers, he would be spending a huge sum towards monthly salary to the weavers but to substantiate the same, no relevant documents like payment vouchers, income tax returns and registers were maintained and also held that the Ex.P16 - salary certificate was an invalid document and created only for the purpose of the case. This Court is of the view that the Tribunal has rightly rejected the evidence of P.W.3 regarding the employment and income of the deceased.

15. The Tribunal based on Ex.C.1- Accident register has fixed the age of the deceased as 45 years and fixed monthly notional income of Rs.8,000/- per month. The claimants have produced the aadhaar card of the deceased, which shows the deceased was aged about 32 years at the time of occurrence, however, considering the conduct of the claimants, who have come forward with the false evidences, this Court is of the view that fixing



the notional income of Rs.12,000/- would be sufficient and as per ***Sarla Verma and others Vs. Delhi Transport Corporation and others*** reported in ***[2009 ACJ 1298 SC : 2009 (6) SCC 121]***, the multiplier is fixed as '16' and as per ***National Insurance Co. Ltd., vs. Pranay Sethi and other*** reported in ***[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]***, future prospectus is fixed as 40% and accordingly, the loss of dependency is assessed by modified monthly notional income and age of the deceased as follows:

Annual income (Rs.12,000/- x 12)	= Rs.1,44,000/-
Future prospects @ 40%	= Rs.57,600/-
Yearly income of the deceased	= Rs.2,01,600/-
Yearly contribution to his family (deduction of 1/3)	= Rs.1,34,400/-
Applicable Multiplier	= 16
Total compensation (Rs.1,34,400 x 16)	= Rs.21,50,400/-

16. The Tribunal has awarded Rs.40,000/- towards loss of consortium to wife of the deceased, but as per the judgment of Hon'ble Apex Court in ***Magma General Insurance Co. Ltd., vs Nanu Ram [2018 ACJ 2018]***, all the claimants are entitled for consortium. In this case, the claimants are the wife, children and parents of the deceased Kanagaraj, hence, this Court is inclined to award Rs.40,000/- each to the wife, children



and parents of the deceased. Whereas the conventional heads are concerned, the compensation awarded by the Tribunal are just and the same are hereby confirmed.

17. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	5,60,028/- (after deducting 50% contributory negligence)	21,50,400/-	Enhanced
2.	loss of consortium	40,000/-	2,00,000/-	Enhanced
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	6,30,028/-	23,80,400/-	Enhanced
	Deduction with respect to 50% Contributory negligence	---	11,90,200/-	
	Total Compensation	6,30,028/-	11,90,200/-	Enhanced

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,30,028/- is



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hereby enhanced to **Rs.11,90,200/- [Rupees Eleven Lakhs Ninety Thousand and Two Hundred only]** along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance company is directed to deposit the amount awarded 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 to the credit of M.C.O.P.No.1366 of 2018 on the file of the Special District Judge, Motor Accidents Claims Tribunal, Salem. On such deposit, the appellants/claimants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

12.01.2024



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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special District Judge,
Motor Accident Claims Tribunal,
Salem.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

K. RAJASEKAR, J.

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