IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1324 of 2024

1. Rajendiran

2. Mariyayi ... Appellants

vs.

1. Ilayaraja

2. The Manager,
Tata AIG General Insurance Company Limited,
1st Floor, Rajendra Building,
Duraiswamy Pillai Street,
West Tambaram, Chennai – 600 045. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 04.12.2023 in M.C.O.P. 88 of 2021 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

For Appellants	: Mr.Ma.Pa.Thangavel for Mr.M.Lokesh
For R2	: Mr.J.Michael Visuvasam
R1	: No appearance

J U D G M E N T

The appellants are the claimants in M.C.O.P. 88 of 2021 on the file of the Motor Accident Claims Tribunal, Perambalur. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.80,00,000/- for the death of their son Raja in a road accident that occurred on 25.01.2021.

2. The brief case of the appellants / claimants is as follows :

On 25.01.2021, Raja (since deceased) was riding a Hero Passion Pro motorcycle bearing Registration Number TN-46-R-6711 on Mandapam – Nannai Road and at about 6.10 p.m. a speeding Hero Splender motorcycle bearing Registration Number TN-46-X-9840 belonging to the first respondent came on the opposite direction and hit the two wheeler driven by Raja (deceased) resulting in his instantaneous death.

3. According to the claimants, the rash and negligent driving of the rider of the motorcycle bearing Registration Number TN-46-X-9840 was the cause of the accident and that since the said vehicle was insured

with the second respondent, the Tata AIG General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the owner of the motorcycle remained absent and was set *ex parte*. The second respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the offending motorcycle bearing Registration Number TN-46-X-9840 and the deceased in the ratio 50:50 and directed the second respondent to pay compensation of 11,17,934/- (50% of the total compensation of Rs.22,35,868/-) to the appellants (claimants) together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation. The Tribunal also held that the liability of the respondents are joint and several.

6. Aggrieved over the quantum of compensation and the contributory negligence fastened on the part of the deceased by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mr.Ma.Pa.Thangavel, learned counsel appearing for the appellants and Mr.J.Michael Visuvasam, learned counsel appearing for the second respondent.

8. Mr.Ma.Pa.Thangavel, learned counsel appearing for the appellants contended that the Tribunal relying on the rough sketch (Ex.X2) had come to a conclusion that the deceased Raja also contributed to the accident to the extent of 50%. He relied on the decision of the Hon'ble Supreme Court in ***Jiju Kuruvila and Others vs Kunjujamma Mohan and Others*** reported in ***2013(2) TN MAC 44 (SC)*** and contended that mere position of the vehicles after accident, as shown in the rough sketch, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. It is also his contention that the Tribunal has not awarded just compensation to the claimants.

9. Per contra Mr.J.Michael Visuvasam, learned counsel appearing for the second respondent contended that the Tribunal after analysing the evidence on record had rightly fixed negligence on the part of the riders of both the vehicles in the ratio 50:50 and also awarded just compensation to the claimants. Therefore, prayed for dismissal of the present appeal.

10.**Negligence :**

The FIR (Ex.P1) was registered against the rider of the first respondent's vehicle bearing Registration Number TN-46-X-9840. In the complaint, it is stated that Raja (deceased) was travelling northern towards south on the left hand side of the road. Thiru.Subramanian (P.W.2), the eyewitness to the occurrence, had deposed that the rider of the first respondent's vehicle was rash and negligent in driving his vehicle and that the accident took place on the left hand side of the road. Nothing useful was suggested to P.W.2 during the course of cross examination to discredit or disbelieve his versions. In the decision in ***Jiju Kuruvila and Others vs Kunjujamma Mohan and Others*** (cited supra) it has been held thus :

“24. The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction etc. depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident caused, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.”

When the eyewitness account is clear as to the manner of accident, the Tribunal was wrong in fixing 50% contributory negligence on the part of the deceased. In the circumstances, the negligence is fixed on the part of the rider of the first respondent's vehicle.

11.**Quantum :**

According to the claimants, their son Raja was working as a loadman in a private concern in Dubai earning a sum of Rs.35,000/- per month. In the absence of satisfactory proof, the Tribunal fixed the notional monthly income of the deceased as Rs.15,167/- based on the Cost of Inflation Index for the year 2020 – 2021. The accident took place in the year 2021 and the deceased was aged 30 years. He died as a bachelor. According to the claimants, they were depending on the income of their son Raja. In the circumstances, this Court is of the opinion that fixing notional monthly income of the deceased at Rs.16,000/- would meet the ends of justice. As per the decision of the Supreme Court of India in ***National Insurance Co. vs Pranay sethi and others*** reported in ***2017 (2) TNMAC 601,*** 40% is added towards future prospects of the deceased. The deceased died as a bachelor and hence, 50% is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 17 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121.***

Calculation

Notional Monthly Income = Rs.16,000/-

40% Future Prospects = Rs.22,400/-

After 1/2 deduction = Rs.11,200/-

Loss of dependency

= Rs.11,200/- x 12 x 17

= Rs.22,84,800/-

In addition to that the claimants are entitled to Rs.88,000/- (44,000 x 2), Rs.16.500/- and Rs.16,500/- for 'loss of consortium', 'loss of estate' and 'funeral expenses' respectively as per the decision in ***National Insurance Co. vs Pranay sethi and others*** (cited supra). Thus, the claimants are entitled to a total compensation of Rs.24,05,800/- (22,84,800 + 88,000 + 16,500 + 16,500= 24,05,800) as shown in the following tabular column.

S.No.	***Head***	***Amount granted by this court***
1.	Loss of dependency	Rs.22,84,800/-
2.	Loss of consortium (Rs.40,000/- x 2)	Rs.88,000/-
3.	Funeral expenses	Rs.16,500/-
4.	Loss of Estate	Rs.16,500/-

S.No.	*Head*	*Amount granted by this court*
Total		**Rs.24,05,800/-**

12. Thus, the compensation awarded by the Tribunal is enhanced to Rs.24,05,800/- which would carry interest at the rate of 7.5% per annum.

13. In the result,

i. The Civil Miscellaneous Appeal is partly allowed. No costs.

ii. The compensation awarded by the Tribunal is enhanced to Rs.24,05,800/- with interest at the rate of 7.5% per annum.

iii. The orders passed by Tribunal fixing contributory negligence on the part of the deceased is set aside.

iv. The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, within a period of four weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

v. The second respondent, the Tata AIG General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.24,05,800/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order to the credit of M.C.O.P. 88 of 2021 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

vi. On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

20.09.2024

Index : Yes/No
Speaking/Non-speaking order

mtl

To

1.The Motor Accidents Claims Tribunal,
Principal District Court, Perambalur.

2. New India Assurance Company Limited,
LIC Building, 6th Floor,
N.S.C. Bose Road,
Chennai - 600 001.

3.The Section Officer, VR Section, Madras High Court, Chennai.

R.HEMALATHA, J.

mtl

C.M.A.No.1324 of 2024

20.09.2024