



Civil Miscellaneous Appeal No.1031 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1031 of 2022

1.Parameswari
2.Thangaraj
3.Stalin
4.Allirani
5.M.Mathiarasan

... Appellants

Vs.

1.B.Panneerselvam

2.ICICI Lombard General Insurance Co. Ltd.,
No.84 & 85, 1st Floor,
Wall Tax Road, Chennai - 600 079.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.09.2018 made in M.C.O.P.No.4928 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub Court II, Court of Small Causes, Chennai.

For Appellants : Mr.R.J.Radhika

For Respondents : Mr.B.Ullasavelan [R1]
No appearance [R2]

JUDGMENT



Civil Miscellaneous Appeal No.1031 of 2022

WEB COPY

This appeal has been filed by appellants/claimants seeking for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Special Sub Court II, Court of Small Causes, Chennai, in M.C.O.P.No.4928 of 2016, dated 24.09.2018.

2. The deceased, who is the husband of the first appellant, was walking as a pedestrian at Anna Salai in front of Pallavan Illam, at about 16.03.2016 at about 4.30 a.m. At that point of time, the offending vehicle driven by the first respondent which was proceeding from South to North was driven in a rash and negligent manner and hit the deceased and as a result, he sustained multiple injuries and died on the spot. It is under these circumstances, the appellants/claimants, who are the wife and children of the deceased, filed the claim petition before the Tribunal.

3. The Tribunal, considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the offending vehicle was driven in a rash and negligent manner, which resulted in the accident. The Tribunal has also given a finding that the deceased crossed the road in spite of the median without



seeing the car and hence, has contributed to the accident. Accordingly, the Tribunal fixed contributory negligence on the part of the deceased at 25%. Having rendered the above finding, the Tribunal proceeded to award the total compensation at Rs.5,45,200/- in the following manner:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of dependency	4,75,200/-
2.	Loss of consortium	40,000/-
3.	Loss of estate	15,000/-
4.	Funeral expenses	15,000/-
	Total	5,45,200/-

4. Out of the above compensation, the second respondent was saddled with the liability of 75% and accordingly, the second respondent was directed to pay compensation of Rs.4,08,900/- with interest at 7.5% p.a.

5. The appellants/claimants, not being satisfied with the compensation awarded by the Tribunal, has approached this Court seeking for enhancement of compensation.

6. Heard Ms.R.J.Radhika, learned counsel for appellants/claimants



Civil Miscellaneous Appeal No.1031 of 2022

and Mr.B.Ullasavelan, learned counsel for second respondent insurance company.

7. This Court carefully considered the submissions made on either side and the materials available on record.

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

9. In the considered view of this Court, except for the first appellant, the other appellants, who are the sons and daughters cannot be held to be claimants in this case. The compensation that has been awarded by the Tribunal under various heads looks very reasonable and it does not require the interference of this Court.

10. The only other issue that requires the consideration of this Court pertains to 25% contributory negligence that has been attributed against the deceased.

11. The Tribunal, on considering the evidence of RW-1 and Ex.P8 -



WEB COPY

Inspection Report and Ex.P4 - final report came to a categorical conclusion that the first respondent had driven the car in an uncontrollable manner and thereby, caused the accident. PW-2, who was an eye-witness to the accident, had deposed regarding the same.

12. The Tribunal, after having rendered the above finding, also concluded that the deceased had suddenly crossed the road in spite of the median that was constructed to prevent the public from crossing the road. The accident, in this case, had taken place at about 4.00 a.m.

13. This Court carefully considered the rough sketch and the accident register, which were marked as Ex.P2 and Ex.P3. It is seen that the place of occurrence is away from the median and it is not as if the deceased had jumped over the median and as a result, came in contact with the car. The car had hit the deceased almost near the Pallavan Illam and considering the evidence available on record, the deceased cannot be attributed with any contributory negligence. Hence, this Court is inclined to interfere with the award passed by the Tribunal insofar as imposing 25% contributory negligence on the deceased.

N.ANAND VENKATESH, J.



Civil Miscellaneous Appeal No.1031 of 2022

gm

WEB COPY 14. In the light of the above discussion, the second respondent insurance company is directed to deposit the entire compensation of Rs.5,45,200/- awarded by the Tribunal, 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 four weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

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

08.04.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

gm

To

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

Civil Miscellaneous Appeal No.1031 of 2022