



C.M.A.No.1909 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2024

CORAM

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

C.M.A.No.1909 of 2022

D.Sivaprakash
S/o Late Deivasigamani

... Appellant

Vs.

1. S.Murugan,
S/o Sekar
2. K.Somasundaram,
S/o Kuppusamy Gounder
3. United India Insurance Company Limited,
Branch Office at No.5, Big Bazaar Street,
Dharmapuram,
Tiruppur District - 638 656
4. M.P.Ponnusamy,
S/o Periya Gounder
5. United India Insurance Company Limited,
Branch Office at No2/117, R.S.Road,
Chennimalai, Erode - 638 051

(4th and 5th respondents impleaded
as per order passed in M.P.No.732/2017 dated 04.12.2017
and order passed in M.P.No.896/2017 dated 21.12.2017) ... Respondents



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Prayer : The Civil Miscellaneous Appeals are filed under Section 19 of the Hindu Marriage Act, 1995, against the order made in M.C.O.P.No.64 of 2017 dated 19.08.2021 on the file of the Motor Accident Claims Tribunal (Special District Court) at Erode.

For Appellant : Mr.G.Naresh Kumar

For Respondents : No appearance for R1,R2 & R4
Mr.D.Bhaskaran for R3 & R5

JUDGMENT

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

The Civil Miscellaneous Appeal has been filed by the claimant for enhancement of compensation granted by the Tribunal in the award dated 19.08.2021 made in M.C.O.P.No.64 of 2017 on the file of Motor Accident Claims Tribunal, (Special District Court) at Erode.

2.The case of the claimant in the claim petition is that on 11.10.2016 at about 04.00 p.m., the deceased Sivakami was traveling in Maruti 800 Car, bearing Regn.No.TN30.D.0910 which was driven by the claimant on Chennimalai to Perundurai Road from north to south direction in slow and caution manner. While they were proceedings near 1010 Colony pirivu in front of KSB Bakery, a TATA Ace vehicle bearing Regn.No.TN 42 V 8850 was parked at no parking place in the middle of the road without adhering to traffic



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rules and regulations. Due to which, the Maruti car dashed from behind the

TATA Ace vehicle and the deceased sustained grievous injuries on the head, face and left leg as she was seated beside the claimant. Immediately, the deceased was taken to Care 24 Medical Centre and Hospital and admitted in ICU ward where she died at 10.50 p.m. due to her head injuries. The accident had occurred only due to the negligent of the 1st respondent driver of TATA Ace vehicle. Hence, the claimant filed M.C.O.P.No.64 of 2017 before the Motor Accident Claims Tribunal(Special District Court) at Erode, claiming a sum of Rs.1,00,00,000/- as compensation for the death of his mother, O.P.Sivakami.

3. The 1st respondent is the driver and the 2nd respondent is the owner of said TATA Ace. They remained absent and thus, they were set exparte before the Tribunal.

4. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to the negligence on the part of both, driver of the Maruti car and the driver of TATA Ace and fixed 60% contributory negligence on the part of the driver of the Maruthi car/ appellant herein and 40% contributory negligence on the part of the driver of the TATA Ace and awarded a total compensation of Rs.56,37,531/- and deducting 60% towards contributory negligence, i.e., Rs.33,82,519/-, awarded a sum of



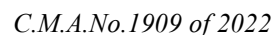
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Rs.22,55,012/- to the claimant with 7.5% interest per annum from the date of the petition till the date of deposit and costs. The Tribunal has ordered that the 3rd respondent/insurer is liable to pay the said Rs.22,55,012/- to the claimant within a month.

5. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal.

6. The learned counsel appearing for the appellant/claimant would state that the Tribunal erred in finding that the appellant herein/claimant was negligent to the extent of 60%. He would state that the accident took place only due to the negligence of the driver of TATA Ace Van bearing Reg.No.TN 42 V 8850 who had parked the van in such a manner endangering the safety of the road users and the Tribunal has erroneously fixed only 40% negligence on the part of the driver of TATA Ace Van as the entire negligence is on the part of the driver of the said Van. Learned counsel would further state that the Tribunal failed to consider the income of the deceased from the agricultural lands and further, the deduction of 50% towards personal expenses of the deceased is not proper. The Tribunal ought to have deducted only 1/3rd towards personal expenses of the deceased. Therefore, he prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the 3rd



10. The Tribunal, , after deducting 60% contributory negligence on the part of the appellant/claimant, has awarded a sum of Rs.22,55,012/- as compensation to the claimant. It is not in dispute that the deceased was working as Headmistress in Kasturba Aided Elementary School Uppiplayam, Chennimalai. Though the claimant claimed that the deceased was earning more than Rs.35,000/- per month as income from the agricultural land, the Tribunal, only on considering the oral and documentary evidence, has given a



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finding that the deceased was not earning any income from the agricultural, even though, agricultural lands are in the name of the deceased. Thus, the Tribunal has taken only the salary of the deceased and adding 30% towards future prospects, fixed a sum of Rs.8,36,073/- as her income per annum. Since the dependent of the deceased is her only son, the appellant/claimant, the Tribunal deducted 1/2 towards personal expenses. Further, the aged of the deceased was 46 years at the time of accident, therefore, applying the multiplier 13, the Tribunal, fixed a sum of Rs.54,34,468/- towards loss of income of the deceased, which in our opinion is fair and reasonable and needs no interference by this Court.

11. Insofar as the contributory negligence is concerned, it is seen from the materials available on record that the deceased sustained grievous injuries on head, face and left leg. She died on the same date of accident due to head injuries. The TATA Ace Van was parked on the eastern side mud road facing south with danger light on, on the back side. If the appellant/claimant would have driven the Maruthi car in a normal speed, he would have noticed the same and would have avoided dashing against the car. Only on account of high speed, negligent and rash driving of the appellant/claimant, the car dashed on the right back side of TATA Ace Van and moreover, the impact was heavy and the Maruthi car was completely damaged. Thus, the Tribunal fixed 60%



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contributory negligence on the part of the driver of the maruthi car, the appellant herein. We are of the opinion that there is no error in the said finding of the Tribunal warranting interference by this Court.

12. In the result, the Civil Miscellaneous Appeal is dismissed The judgment and decree passed by the Tribunal in MC.O.P.No.64/2017 dated 19.08.2021 is confirmed. No costs.

(J.N.B., J.) (R.S.V., J.)
11.11.2024

vsi

To

The Motor Accident Claims Tribunal
(Special District Court)
at Erode.



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

vsi

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