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C.M.A. No.2586 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.2586 of 2021

1. K.Jesintha Mary
2. K.Vivek ishwarya
3. Lisiya Dayana

... Appellants / Petitioners

Vs.

1. G.Sridhar
2. The Divisional Manager,
United India Insurance Co., Ltd.,
Divisional Office, Dhurga Bhavani Square,
Opp. to Railway Station,
Denkanikottai Road,
Hosur-635109

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree dated 18.09.2019 passed in M.C.O.P. No.1276 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Court for MACT cases, Krishnagiri.

For Appellants	:	Mr. S. P. Yuaraj
For R1	:	No appearance
For R2	:	M/s. J. Chandran



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation and also against the contributory negligence fixed on the deceased in this case to the extent of 10% awarded in M.C.O.P. No.1276 of 2018, dated 18.09.2019 on the file of the Motor Accident Claims Tribunal, Special District Court for MACT Cases, Krishnagiri.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimants in brief is that on 28.02.2017 at about 7.45 hours the deceased herein, namely Kulandairaj was taking his two daughters as pillion riders to their School in his two wheeler bearing Registration No.TN 70 H 6391, while he reached opposite to G.K.S.Nagar on the Mathagiri to Hosur Main Road, the driver of the staff bus bearing Registration No.TN 57 H 8019 belongs to the first respondent came in an opposite direction with high speed and dashed on the two wheeler of the deceased which resulted in causing severe injuries to the deceased and



caused death on the spot. Both the pillion riders have also sustained grievous injuries subsequently the dependents of the deceased including the injured in this case have come forward with the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.40,00,000/-.

4. The first respondent, who is the owner of the bus has not contested the claim. The second respondent, who is the insurer of the bus has contested the claim on the ground that the accident has occurred only due to the negligent driving of the deceased herein. They further contended that the deceased rode the two-wheeler by carrying two other children and suddenly entered into the middle of the road for crossing, which resulted in accident. They have also disputed the income, age, avocation and dependency of the deceased.

5. The Tribunal after considering the evidences placed on record has held that the driver of the bus has driven it rash and negligent manner at the same time, the deceased has ridden the two-wheeler along with his two children, by suddenly hitting on the rear side of the bus, he is also contributed to the accident. Accordingly the Tribunal has proportioned the contributory negligence to the extent of 90% : 10%.



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6. Aggrieved over the contributory negligence fixed on the deceased and also for enhancement of compensation, the claimants have approached this Court by way of filing this appeal. The Insurance Company has not preferred any appeal as against the same.

7. The learned Counsel for the claimants has submitted that there is no evidence placed on record to fix the contributory negligence and the Tribunal has erred in fixing the contributory negligence based on the fact that 3 persons travelled in the vehicle. In this case, the driver of the bus has not been examined, the contributory negligence fixed based on no evidence and prays to set aside the same. He further submits that the compensation awarded under other heads including the notional income fixed is on the lower side and prays to enhance the same.

8. The learned counsel for the Insurance Company has submitted that there is evidence to show that the deceased himself is contributed to the negligence eventhough, the percentage of contributory negligence is to be fixed more than the percentage fixed by the Tribunal, they have not yet



preferred any appeal considering the quantum of compensation awarded hence prays to confirm the quantum of compensation awarded in this case.

9. I have considered the rival submissions made on both sides and also perused the records.

10. Before Tribunal, P.W.1, who is the pillion rider, who has sustained injuries at the time of accident was examined. According to her, her father was riding a two wheeler along with her and her sister was seated behind her and they were proceeding to their school, there was a center median in the road and the bus suddenly came in the opposite to the two-wheeler, hit on them. This evidence shows that the deceased has crossed the center median and entered into the opposite direction at that time, the accident had taken place. Further, the Tribunal based on the Motor Vehicle Inspection Reports – Exs.R2 & R3 has held that the right side of the two wheeler and the rear side of the bus has sustained damages. Motor Vehicle Inspection Reports also corroborates the case of the respondent that the deceased himself has crossed the road and hit on the bus.



11. It is not the case that the bus has entered into the wrong side and hit on the two-wheeler. The Tribunal further held that if the bus driver has driven with due care and caution, especially, when there was a road crossing, he could have avoided the accident. Further the Tribunal has also held that the bus was driven in such a speed and the deceased has suddenly entered in to the road which resulted in accident. Considering both the facts, the Tribunal has held that the deceased has also contributed to the accident to the extent of 10%. Since there was no appeal against the above finding by the Insurance Company, I am of the view that the proportionate of negligence fixed on the both sides is to be confirmed and accordingly, the finding of the Tribunal with regard to the negligence is hereby confirmed.

12. With regard to the quantum of compensation is concerned, the Tribunal, based on Driving Licence and Aadhar Card, fixed the age of the deceased as 40 years. Eventhough, it is stated in the Postmorterm Report that the age of the deceased is 50 years, the Tribunal has rightly rejected the age stated in the postmorterm Report, since the same was came into existence only after the accident, whereas, the other documents were came into existence prior to the accident and more particularly, the Driving



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Licence – Ex.P12, which is carrying the date of birth of the deceased as 22.11.1977 is having more probative value than the age mentioned in the Postmortem Certificate. After accepting Ex.P12 – Driving Licence of the deceased as proof of age, the Tribunal held that the deceased is aged more than 40 years, which is not proper. The deceased is aged less than 40 years as on the date of accident i.e., on 28.02.2017. The claimants have not proved the income of the deceased eventhough claims that he was earning more than Rs.30,000/- by doing Carpenter work. Since no income has been proved by the claimants, this Court by following the Division Bench Judgment of this Court in *Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]* case, for fixing the notional income of various categories of persons whose income has not been proved and based on cost of index filed by CBDT, based on the Apex Court judgement of *Syed Sadiq Vs. United India Insurance Company [2014 (1) TNMAC 459]*, inclined to modify the notional income fixed by the Tribunal as follows:

Date of accident	= 28.02.2017
Cost of Inflation index	= 264 (Financial Year 2016-2017)
Notional income of the deceased	= (6,500/- x 2640) / (129) = Rs.13,302/-



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13. The Tribunal has granted 25% to the future prospects of the deceased is not proper and as per the dictum laid down by the Hon'ble Apex Court in *National Insurance Co. Ltd., vs. Pranay Sethi and other* [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680], this Court is inclined to fix 40% as the future prospectus of the deceased. The dependents of the deceased are three in number the Tribunal has rightly deducted 1/3 as the personal expenses of the deceased. The Tribunal has rightly fixed the multiplier '15' as per Judgment of the Hon'ble Apex Court in *Sarla Verma and others Vs. Delhi Transport Corporation and others* [2009 ACJ 1298 SC : 2009 (6) SCC 121], since the age of the deceased less than 40 years at the time of the accident. Accordingly, the compensation under the head loss of dependency with modified monthly notional income of Rs.13,302/- is assessed as follows:

Annual income (Rs.13,302/- x 12)	= Rs.1,59,624/-
Future prospects @ 40%	= Rs.63,849.6 @ Rs.63,850/-
Yearly income of the deceased	= Rs.2,23,474/-
Yearly contribution to his family (deduction of 1/3=Rs.74,491/-)	= Rs.1,48,983/-
Applicable Multiplier '15'	
Total compensation (Rs. 1,48,983 x 15)	= Rs.22,34,745/-



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14. The Tribunal has awarded a sum of Rs.30,000/- towards loss of consortium and also separately awarded a sum of Rs.40,000/- under the head loss of love and affection and as per the Judgment of the Hon'ble Apex Court in *National Insurance Co. Ltd., vs. Pranay Sethi and other* [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680], the head loss of love and affection is included under the head loss of consortium and all the dependants are entitled to get loss of consortium. Recently, in *United India Insurance Co. Limited vs. Satinder Kaur and Ors* [MANU/SC/0500/2020 : (2021) 11 SCC 780] reiterated that compensation under the head loss of consortium is inclusive of Loss of love and affection. The Tribunal has awarded a sum of Rs.25,000/- under the head Loss of Estate and same is reduced to Rs.15,000/-. The Tribunal has rightly awarded compensation under the head funeral expenses a sum of Rs.15,000/- and the same is hereby confirmed.

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



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	Rs.13,50,000/-	Rs.22,34,745/-	Enhanced
2.	Loss of Consortium	Rs.30,000/-	Rs.1,20,000/-	Enhanced
3.	Loss of Estate	Rs.25,000/-	Rs.15,000/-	Reduced
4.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5	Towards Love and Affection	Rs.40,000/-	---	Rejected
	Total Compensation	Rs.14,55,000/-	Rs.23,84,745/-	Enhanced by Rs.9,29,745/-
	Less contributory negligence 10%	Rs.1,45,500/-	Rs.2,38,474.5/- @ Rs.2,38,475/-	
	Less contributory negligence 90%	Rs.13,09,500/-	Rs.21,46,270.5/ - @ Rs.21,46,271/-	

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,09,500/- is hereby enhanced to Rs.21,46,271/- [Rupees Twenty One Lakhs Forty Six Thousand Two Hundred and Seventy One only] as 90% from the total award amount of Rs.23,84,745/- together 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



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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.1276 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Court for MACT cases, Krishnagiri. On such deposit, the appellants 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 claimant. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. In other aspects the award of the Tribunal shall stands confirmed. There shall be no order as to costs in the present appeal.

09.01.2024

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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K. RAJASEKAR, J.

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To:

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

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