IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2783 of 2021

1. Jancy Rani
2. S. Dharshini (Minor)
3. S. Poovizhi (Minor)
   Minor Petitioner 2 & 3 are represented by their mother & Next Guardian Mrs. Jancy
4. Pappa ... Appellants

vs.

1. M. Kandamani

2. HDFC ERGO General Insurance Company Limited,
   RR Towers-II, 2nd Floor,
   No. 94/95, T.V.K. Industrial Estate,
   Guindy, Chennai 600 032. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 21.07.2020 in M.C.O.P.2324/2018 on the file of the Motor Accident Claims Tribunal, (Small Causes Court, Special Subcourt No.1), Chennai.

For Appellants : Mr. K. Varadha Kamaraj

R1 : No appearance

For R2 : Mr. N. Somasundaar

JUDGMENT

The appellants are the claimants in M.C.O.P.2324/2018 on the file of the Motor Accident Claims Tribunal, Small Causes Court, Chennai. and they filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, Rule 3 of the M.A.C.T. Rules, seeking compensation of Rs.45,00,000/- for the death of one Selvaraj (husband of the first claimant; father of claimants 2 and 3; and son of the fourth claimant) in a road accident that occurred on 04.03.2018.

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

2.1. On 04.03.2018 Selvaraj (since deceased) was walking along Bengalur-Chennai National Highways and near Thandalam, a speeding car bearing Registration Number TN-22-DB-1829, belonging to the first respondent, hit Selvaraj as a result of which he fell down and sustained injuries all over his body. He was immediately rushed to Saveetha Hospital, Thandalam from where he was referred to Rajiv Gandhi Government General Hospital, Chennai. However, he succumbed to injuries on 19.03.2018.

2.2. According to the claimants, the rash and negligent driving of the driver of the car bearing Registration Number TN-22-DB-1829, was the cause of the accident and that since the said car was insured with the second respondent, the HDFC ERGO General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

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

4. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the driver of the car bearing Registration Number TN-22-DB-1829 and on the deceased in the ratio 90:10 and directed the second respondent Insurance Company to pay compensation of Rs.18,81,000/- (90% of the total Award amount of Rs.20,90,000/-) to the claimants together with interest at the rate of 7.5%

per annum from the date of petition till the date of realisation,. vide its orders dated 21.07.2020.

5. Aggrieved over the quantum of compensation awarded by the Tribunal and also challenging fastening 10% contributory negligence on the part of the deceased, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Heard Mr. K. Varadha Kamaraj, learned counsel appearing for the appellants and Mr. N. Somasundaar, learned counsel appearing for the second respondent Insurance Company.

7. Mr. K. Varadha Kamaraj, learned counsel appearing for the appellants contended that the Tribunal had fastened negligence on the part of the deceased to an extent of 10% since he was found to be in an inebriated condition. According to him, no blood test was conducted to prove the same and in the circumstances, fixing contributory negligence on the part of the deceased by the Tribunal is erroneous. He also contended that the Tribunal has not awarded just compensation to the

claimants and therefore, prayed for enhancement of the same.

8. Per contra, Mr. N. Somasundaar, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal, after analysing the evidence on record, had fixed contributory negligence to an extent of 10% on the part of the deceased and also awarded just compensation and therefore the same need not be disturbed in the present appeal. He also relied on the decision of a Division Bench of this Court in ***Manikandan vs. P. Palani and others*** reported in ***2020(1) TN MAC 449 (DB)*** and contended that though blood samples from the deceased was not taken to test the percentage of alcohol, the Division Bench had fixed 10% towards contributory negligence on the deceased. He also drew the attention of this Court to the medical records and contended that the doctors had clearly indicated that the deceased was under the influence of alcohol on the date of accident and therefore, 10% of contributory negligence fastened on the part of the deceased by the Tribunal is in order.

Negligence

9. In the instant case it is to be noted that the claimant was

walking along Bangaluru-Chennai National Highways. It is not the case of the Insurance Company that the deceased had suddenly crossed the road in an inebriated condition unmindful of vehicular traffic. In fact the driver of the car was not examined on the side of the respondents. The manner of accident clearly shows that the driver of the car was rash and negligent in driving his vehicle. It is true that in the medical records it is mentioned that the deceased was under the influence of alcohol on the date of accident. However, blood samples were not taken to ascertain the percentage of alcohol. Moreover, there is nothing on record to show that the deceased also contributed to the accident.

9.1. In the decision in ***Manikandan vs. P. Palani and others*** (cited supra), the deceased was riding a two wheeler in an inebriated condition and contributed to the accident and in such circumstances, the Division Bench of this Court held that 10% towards contributory negligence should be fixed on the part of the deceased though blood samples were not taken to ascertain the percentage of alcohol. The facts and circumstances of the present case is totally different as in the instant case, the deceased was a pedestrian. As already observed, there is nothing on record to show that the deceased contributed to the accident. Hence the entire negligence is fastened on the part of the driver of the offending vehicle.

Quantum

9.2. According to the claimants, the deceased was working as a Heavy Duty Motor Vehicle driver earning a sum of Rs.18,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.10,000/-. The accident took place in the year 2018 and the deceased was aged 36 years on the date of accident. In the circumstances, this Court is of the view that fixing the notional income as Rs.15,000/- per month 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. Since the deceased had four dependents, 1/4 is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 15 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121.***

Calculation

Notional Income = Rs.15,000/-

40% Future Prospects = Rs.21,000/-

After 1/4 deduction = Rs.15,750/-

Loss of dependency

= Rs.15,750/- x 12 x 15

= Rs.28,35,000/-

In addition to that the claimants are entitled to Rs.1,60,000/- (40,000 x 4), Rs.15,000/- and Rs.15,000/- 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).

9.3. The enhanced amount under the different heads are detailed hereunder:

S.No.	***Head***	***Amount granted by this court (Rs.)***
1.	Loss of dependency	28,35,000/-
2.	Loss of consortium (Rs.40,000/- x 4)	1,60,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-

S.No.	***Head***	***Amount granted by this court (Rs.)***
	Total	30,25,000/-

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

10. In the result,

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

ii. The orders passed by the Tribunal fixing contributory negligence on the part of the deceased to an extent of 10% is set aside.

iii. The compensation awarded by the Tribunal is enhanced to Rs.30,25,000/-.

iv. The appellants / claimants are directed to pay 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 HDFC ERGO General Insurance Company Limited, Chennai, is directed to deposit the enhanced compensation amount of Rs.30,25,000/- (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, to the credit of M.C.O.P.2324/2018 on the file of the Motor Accident Claims Tribunal, (Small Causes Court, Special Subcourt No.1), Chennai, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order.

vi. The enhanced compensation amount of Rs.30,25,000/- is apportioned to the claimants as follows:

Jancy Rani (first claimant)	Rs.7,25,000/-
Minor S. Dharshini (second claimant)	Rs.10,00,000/-
Minor S. Poovizhi (third claimant	Rs.10,00,000/-
Pappa (fourth claimant)	Rs.3,00,000/-

vii.On such deposit being made, the claimants 1 and 4 are at liberty to withdraw the same as per the apportionment made by this Court after filing proper petition for withdrawal. Since the claimants 2 and 3 are minors, their share may be deposited in anyone of the nationalised banks until they attain majority.

27.09.2024

Index : Yes/No
Speaking/Non-speaking order

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To

1. Motor Accident Claims Tribunal,
(Small Causes Court, Special Subcourt No.1), Chennai.

2. HDFC ERGO General Insurance Company Limited
RR Towers-II, 2nd Floor,
No. 94/95, T.V.K. Industrial Estate,
Guindy, Chennai 600 032.

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

R.HEMALATHA, J.

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