



Cma.No.2806 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Civil Miscellaneous Appeal No. 2806 of 2021

1. S. Sakundala
 2. S. Prakash
 3. S. Prashanth (minor)
- .. Appellants

[Appellant No.3 is *Suo motu* declared as major and his mother/S.Sakundala is discharged from guardianship of the appellant No.3, vide order of this Court dated 09.12.2024 made in CMA.No.2806 of 2021]

Versus

The Managing Director
Metropolitan Transport Corporation Ltd.,
Pallavan House, Chennai – 600 002.

.. Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 05.02.2021 made in M.C.O.P. No.6168 of 2012 on the file of the Motor Accident Claims Tribunal,(III-Small Causes Court), Chennai.

For Appellants : Mr. K. Varadha Kamaraj

For Respondent : Dr. S. S. Swaminathan

JUDGMENT



Cma.No.2806 of 2021

WEB COPY

This Civil Miscellaneous Appeal has been filed by the appellants/claimants, challenging the Judgment and Decree dated 05.02.2021 made in M.C.O.P. No.6168 of 2012 on the file of the Motor Accident Claims Tribunal,(III-Small Causes Court), Chennai insofar as they relates to fixing 40% negligence on the deceased and the quantum of compensation.

2. The case of the appellants/claimants is that on 13.07.2012 at about 8:00 A.M., the deceased, Sabesan, was driving the motorcycle bearing Registration number TN-09-AR-3983 from West to East direction on G.N. Chetty Road, T.Nagar, Chennai. At that time, a Metropolitan Transport Corporation Limited bus bearing Registration number TN-01-N-5495 was driven by its driver in a rash and negligent manner in the wrong direction on Dr. Narshimman road and hit the motorcycle driven by the deceased. In the impact, the deceased sustain severe injuries and he was rushed to Bharathi Raja Hospital, where he received treatment from 13.07.2012 to 24.07.2012. However, inspite of treatment, the deceased succumbed to his injuries on 25.07.2012 in the hospital. Therefore, the claimants filed the claim petition, seeking compensation of Rs.45,00,000/- for the death of Sabesan.

3. The respondent- Transport Corporation resisted the claim petition by



Cma.No.2806 of 2021

filing a counter statement, contending that the deceased was wholly responsible for the accident, due to his negligence in not following the road rules. The respondent Transport Corporation also denied the age, monthly income and other particulars furnished by the claimants in the claim statement. It was also stated that the deceased drove the motorcycle in the wrong direction, and thereby sustained grievous injuries and lost his life. Accordingly, the respondent prayed for dismissal of the Claim Petition.

4. In order to prove the manner of accident, on the side of the appellants/claimants, the first claimant being wife of the deceased was examined as P.W.1 and one another eye-witness as P.W.2 and Ex.P1 to Ex.P13 documents were marked. On the side of the respondent/Metropolitan Transport Corporation Limited, the driver of the bus was examined as R.W.1 and Ex.R1 and R2 were marked.

5. The Tribunal, after considering all the evidence adduced before it and the arguments advanced by the learned counsel for the claimant, fixed 60% of negligence on the part of the driver of the respondent/Transport Corporation bus bearing Registration number TN-01-N-5495 and 40% on the part of the deceased Sabesan. The Tribunal also awarded a total compensation of Rs 20,33,538.50/-, but after deducting 40% towards contributory negligence



Cma.No.2806 of 2021

from the entire compensation amount, arrived at Rs.12,20,133.10/-, which was rounded off to Rs.12,20,200/- towards the death of the deceased. The respondent/Transport Corporation was also directed to pay the compensation amount to the appellants/claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realization. Challenging the award of the Tribunal fixing 40% of liability on the deceased-Sabesan as well as quantum, the appellants/claimants have filed the present Civil Miscellaneous Appeal before this Court.

6. Learned counsel for the appellants/claimants submitted that admittedly, the deceased traveled on a one-way road in the wrong direction, riding his motorcycle from west to east direction on the G.N. Chetty Road. At the time, the respondent's MTC bus, entered G.N.Chetty Road from Dr. Narshimman Road, and hit the vehicle driven by the deceased. In order to prove the same, before the Tribunal, the informant of the accident or the traffic police who witnessed the accident were not examined. However, P.W.2 eye-witness was examined by the claimants. Though P.W.2 admitted that the deceased drove the motorcycle in the wrong direction on a one-way road, the accident has resulted owing to the rash and negligent driving of the driver of the bus.



Cma.No.2806 of 2021

7. In support of his contentions, learned counsel for the appellants/claimants relied on a Judgment of the Division Bench of this Court, in the case of ***Rani Nagalakshmi and Anr., v. Srinivasan and 2 others***, reported in ***(2024 (1) TN MAC 72 (DB))***, in which the entire liability was fastened as against the Transport Corporation and the same can be extended to the appellants as well. However, the learned counsel for the appellants/claimants fairly submitted that the quantum of compensation arrived at by the Tribunal is just and reasonable and it does not require interference.

8. Learned counsel appearing for the respondent submitted that P.W.2 in his deposition has stated that the deceased rode the motorcycle on a one-way road. Although no other independent witness was examined on the side of the respondent, a rough sketch/Ex.R2 was marked by the Manager of the respondent's corporation to prove the manner of the accident. He further submitted that Ex.R2/rough sketch itself is sufficient to establish that the deceased rode the motorcycle on a one-way on G.N.Chetty Road, and thereby, justifying the Tribunal fastening 40% of the liability to the deceased and 60% of the liability to the respondent/Transport Corporation. According to the learned counsel for the respondent, this finding is just and fair and it need not to be interfered with by this Court, and praying for dismissal of the appeal.



Cma.No.2806 of 2021

9. Heard the learned counsel for the appellants/claimants and the learned counsel appearing for the respondent and perused the materials available on record.

10. Regarding the issue of contributory negligence in respect of a case where the deceased was riding a motorcycle on a one-way road, the Division Bench of this Court has rendered the following findings :-

“3. The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested by the Claimants. According to the Insurance Company, the road in which Dr. Elangovan was riding was a one-way and he was on the wrong side of the road. The fact that Dr. Elangovan had gone on a one-way would by itself show that the accident occurred due to his negligence and not due to the negligence of the rider of the Motorcycle bearing Registration No.TN-54-E-6045. The quantum of Compensation claimed was termed as excessive and the Claimants were put to strict proof of the age and income particulars as pleaded by them.

10. No doubt, we see considerable force in the contention of the learned Counsel for the Insurance Company regarding violation of Traffic Rules. PW2 in his evidence has admitted that Dr. Elangovan was riding the Motorcycle in a one-way road on the wrong side. He has also added that it is quite common for people to take that service lane since the other way is too circuitous. The Insurance Company has not let in any evidence. The rider of the Two-wheeler was not examined to prove Contributory Negligence. We have repeatedly pointed out that contributory negligence is also a fact to be proved as any other fact and in the absence of any evidence on the side of the Insurance Company. the Insurance Company will be precluded from raising the issue of contributory negligence. But, in the case on hand, as rightly pointed out



WEB COPY



Cma.No.2806 of 2021

by Mr. Bhaskaran, there is evidence of PW2, who is examined as an Eyewitness would show that the deceased was riding his Motorcycle in a one-way on the wrong direction. We will have to necessarily examine as to whether such riding in a one-way road on the wrong direction would by itself be sufficient to conclude that there was negligence on the part of the Rider of the Two-wheeler. Unless such negligence is demonstrated, we do not think we can conclude that the deceased has contributed to the accident by riding on the Motorcycle in a one-way on the wrong direction.

11. As we have already pointed out, there is no evidence on record on the side of the Insurance Company to establish the contributory negligence. We will have to go by the evidence of PW2/Eyewitness. PW2 has admitted that Dr. Elangovan was riding the Motorcycle in a wrong direction in a one-way road, at the same time PW2 has also added that it was very common for people to go on the wrong direction in the said road since it is a service road. We are therefore inclined to accept the contention of Ms. Ramya V Rao on the aspect of negligence. Riding in the wrong direction in a one-way road is in violation of the Traffic Rules. In order to make it an element for testing the contributory negligence, there must be some evidence on the side of the Insurance Company on the manner of the accident. In the absence of such evidence, we do not think we can conclude that the deceased has contributed to the accident. We, therefore affirm the findings of the Tribunal that the accident occurred due to the rashness and negligence of the rider of the Motorcycle which is insured with the Insurance Company. It was open to the Insurance Company to have examined the rider of the Two-wheeler to establish some negligence on the part of the deceased, the absence of such evidence would only lead to the conclusion that the rider of the Motorcycle which is insured with the Insurance Company alone was responsible for the accident.”

11. Upon reviewing the above decision, it is clear that riding the two

wheeler in the wrong direction or on a one-way is a violation of traffic rules



Cma.No.2806 of 2021

but it will not be a ground to fix contributory negligence in a case of this nature. To establish contributory negligence, there must be some evidence on the side of the transport corporation to show the manner of the accident. In the absence of such evidence, the Division Bench concluded that the deceased did not wholly contribute to the accident. In the present case, R.W.1, the transport corporation's driver is an interested party and his evidence is questionable. Apart from his evidence, no other independent witness was examined by the respondents. In the present case, the Tea shop owner who filed the complaint before the nearby Police Station based on which the First Information Report was registered, was marked as Ex.P1 and Ex.R1 on both sides. In the light of the above, the 40% of contributory negligence fixed by the Tribunal as against the deceased is unsustainable. Therefore, this Court is inclined to fix 100% of contributory negligence on the part of the respondent/Transport Corporation.



Cma.No.2806 of 2021

12. Further, the driving license of the deceased was not produced before the Tribunal. It was the duty of the appellants/claimants to establish before the Tribunal that at the time of accident, the deceased possessed valid driving license. In the absence of valid driving license, this Court is inclined to fix 10% of contributory negligence on the part of the deceased, and 90% of the contributory negligence on the part of the respondent/Transport Corporation. However, the quantum of compensation fixed by the Tribunal under all heads is just and reasonable, and this Court feels that there is no need to interfere with it.

13. Accordingly, this Court confirms the compensation awarded by the Tribunal, but modifies the contributory negligence at 10% on the part of the deceased and 90% on the part of the respondent/Transport Corporation. The break-up details of the modified award amount of compensation are as under:-

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Granted, Confirmed, Enhanced and Modified</i>
Loss of dependency	Rs.14,43,288/-	-	Confirmed
Loss of Consortium to the 1 st petitioner	Rs.40,000/-	-	Confirmed
Towards Loss of Love and Affection to the petitioners 2 & 3	Rs.80,000/-	-	Confirmed



Cma.No.2806 of 2021

Heads	Amount awarded by the Tribunal	Amount awarded by this Court	Granted, Confirmed, Enhanced and Modified
Loss of Estate	Rs.15,000/-	-	Confirmed
Transport Expenditure (Ambulance)	Rs.10,000/-	-	Confirmed
Funeral Expenses	Rs.15,000/-	-	Confirmed
Medical bills	Rs.4,30,250.50/-	-	Confirmed
Total	Rs.20,33,538.50/- -After deducting 40% towards contributory negligence, the rounded off total compensation is Rs.12,20,200/-	After deducting 10% towards contributory negligence, from the total compensation is fixed at rounded off Rs.18,30,185/-	Enhanced differentiate amount is Rs.6,09,985/-

14. When the claim petition was filed in the year 2012, the 3rd appellant was aged about 8 years. Now, the 3rd appellant should be aged about 20 years and is therefore considered a major. Though no application has been taken out to declare the 3rd appellant as major, this Court *suo motu* takes into account the age mentioned in the claim petition and also taking into account the efflux of time, declares the 3rd appellant as major and discharges her guardian Mrs. S. Sakundala, from the guardianship. The Registry shall carry out the necessary amendments.

15. In the result, this Civil Miscellaneous Appeal is partly allowed on the

following terms:

<https://www.mhc.trn.gov.in/judis>



Cma.No.2806 of 2021

(i) The award passed by the Tribunal in M.C.O.P.No.6168 of 2012 is modified by enhancing the compensation from **Rs.12,20,200/-** to **Rs.18,30,185/-** along with interest at the rate of 7.5% per annum from the date of petition till the date of realization.

(ii) The respondent/Transport Corporation is directed to deposit the enhanced award amount, as determined by this Court, to the credit of M.C.O.P.No.6168 of 2012, along with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this judgment.

(iii) On such deposit, the Tribunal is directed to transfer the compensation amount directly to the bank account of the respondents/claimants through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fees on the enhanced compensation by the appellants/claimants.

(iv) Regarding the apportionment of compensation is concerned, the first appellant/wife of the deceased is entitled to a sum of **Rs.7,30,185/-** and the 2nd and 3rd appellants are entitled to a sum of **Rs.5,50,000/- each** totally Rs.11,00,000/-. It is underscored that the appellants/claimants are not entitled to any interest for the default period, if any.

(v) There shall be no order as to costs in the present civil miscellaneous

appeal



WEB COPY



Cma.No.2806 of 2021

09.12.2024

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

klt



Cma.No.2806 of 2021

To

WEB COPY

1. The Motor Accident Claims Tribunal,
(III-Small Causes Court), Chennai.

2. The Section Officer, V.R. Section, High Court, Madras.



WEB COPY



Cma.No.2806 of 2021

M.DHANDAPANI, J.,

klt

C.M.A.No.2806 of 2021

09.12.2024