



WEB COPY



C.M.A.No.3091 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3091 of 2021

- 1.P.Sundaram (Died)
- 2.Tamilvani
- 3.Sathiyamoorthy

(Sole petitioner died. Petitioners 2 and 3 are brought on record as LR's of the deceased sole petitioner viz., P.Sundaram vide Court order dated 18.10.2024 made in C.M.P.Nos.10697, 10702 & 10705 of 2024 in C.M.A.No.3091 of 2021 by RHJ)

... Appellants

Vs.

- 1.R.Sam Pandian
- 2.Tata AIG General Insurance Company Ltd.,
Rep. by its Manager,
Having Office at No.72, First Floor,
Dr.Balasundaram Road,
May Flower Apartment,
Coimbatore - 18.
- 3.S.Sathiyamoorthy
- 4.United India Insurance Company Limited,
Rep. by its Manager,
Having Office at No.1171,
Muthiah Complex,
Mettur Road, Erode.
- 5.Sivagami



C.M.A.No.3091 of 2021

(Sole petitioner died. Respondent – 5 is brought on record as LR of the deceased sole petitioner viz., P.Sundaram vide Court order dated 18.10.2024 made in C.M.P.Nos.10697, 10702 & 10705 of 2024 in C.M.A.No.3091 of 2021 by RHJ)

[R-1 & R-3 remained Ex-parte before the Tribunal. Notice to R-1 & R-3 may be dispensed with]

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 23.03.2021 passed in M.C.O.P.No.437 of 2019 on the file of Motor Accidents Claims Tribunal (Special District Judge), Erode.

For Appellant : Mr.R.P.Rubanchakravathy
for M/s.S.Kaithamalai Kumaran

For Respondents : Mr.K.Vinod for R2
R1 and R3 – NDW vide EB
Mr.J.Chandran for R4

J U D G M E N T

This appeal has been filed against the judgment and decree dated 23.03.2021 passed by the Motor Accidents Claims Tribunal, (Special District Judge), Erode, in M.C.O.P.No.437 of 2019.

2.The learned counsel appearing for the appellants submitted that on 02.02.2016, at about 8.30 a.m., the first appellant was riding



C.M.A.No.3091 of 2021

his motor cycle bearing Registration No.TN 33 AH 5225 from Karivappilaivalasu Road to Villarasampatti Nal Rpad and turned to Nasiyanur to Erde Road from West to East direction. At that time, for having a cup of tea in ABC snacks shop, the petitioner crossed the road from North to South. At that time, a Lancer car bearing Registration No.TN 38 AT 2489 came in a rash and negligent manner from East to West direction, suddenly dashed the first appellant, due to which, the first appellant sustained injuries.

3.The learned counsel appearing for the appellants further submitted that thereafter, the injured claimant/ first appellant filed claim petition before the Tribunal, claiming compensation of Rs.7 Lakhs. After adjudication, the Tribunal fixed 70% negligence on the claimant and 30% negligence on the driver of the Car and arrived at a total compensation of Rs.4,98,194/- and directed that the first appellant claimant is entitled to Rs.1,49,458/- [after deducting a sum of Rs.3,48,736/- which is 70% of Rs.4,98,194/-] with interest at the rate of 9% p.a. from the date of petition till the date of deposit and proportionate costs and directed the second respondent to deposit the said amount and dismissed the claim petition as against the respondents 3 and 4.



C.M.A.No.3091 of 2021

WEB COPY

4.The learned counsel appearing for the appellants further submitted that the first appellant has filed this appeal questioning the 70% liability fastened on the first appellant and the quantum of compensation awarded by the Tribunal.

5.The learned counsel appearing for the appellants further submitted that inorder to prove the case, the first appellant examined himself as P.W.1 and also examined eye witness as P.W.2 and P.W.3 – Doctor and marked Ex.P1 to Ex.P.14. The Insurance Company examined R.W.1 – Sub Inspector of Police, Erode City Police Station (Crime Branch) and R.W.2 – Official from the Law Department of the second respondent and marked Ex.R1 and Ex.R2. The Disability Certificate given by the Medical Board of the Government Hospital, Erode was marked as exhibit, Ex.C.1. Though the Insurance Company examined R.W.1 and R.W.2 before the Tribunal, inorder to disprove the case, the Insurance Company did not examine any independent eye witness.

6.The learned counsel appearing for the appellants further submitted that the first appellant tried to cross the road and the driver



C.M.A.No.3091 of 2021

WEB COPY

of the car drove the vehicle in a rash and negligent manner and dashed the first appellant and Ex.P.1 F.I.R. was registered against the driver of the car, however, the Tribunal without any contra evidence, fastened 70% liability on the first appellant, which is not sustainable one. The learned counsel further submitted that the amount awarded as compensation is also very very meagre and hence, the appellant is entitled for enhancement in compensation.

7.The learned counsel appearing for the second respondent Insurance Company submitted that though F.I.R. was registered as against the driver of the vehicle insured with the second respondent, F.I.R. is not an conclusive proof and it is only information passed on to the law enforcing agency and further submitted that after enquiry, the case was closed as 'mistake of fact'. The learned counsel further submitted that the driver of the vehicle insured with the second respondent drove the vehicle with utmost care, however, the first appellant suddenly crossed the road, due to which, the accident happened and hence the Tribunal fixed 70% negligence on the first appellant, which warrants no interference.



C.M.A.No.3091 of 2021

WEB COPY

8.The learned counsel appearing for the second respondent further submitted that the Tribunal after considering all the factual aspects, awarded the compensation which is just and reasonable and hence, the impugned judgment warrants no interference.

9.Heard the arguments advanced on either side and perused the materials available on record.

10.The accident is not disputed. In order to prove the case, the injured claimant examined himself as P.W.1 and also examined eye witness as P.W.2 and P.W.3 – Doctor and marked exhibits Ex.P.1 to Ex.P.14 before the Tribunal. Though R.W.1 and R.W.2 were examined and Ex.R1 and Ex.R2 have been marked on the side of the second respondent Insurance Company, they are not eye witnesses and neither the owner of the Car nor the Insurance Company examined any eye witness. In the absence of the evidence of any independent eye witness, the Tribunal fastening 70% negligence on the first appellant claimant is not sustainable one. Hence, this Court fix the entire negligence i.e., 100% negligence on the driver of the vehicle insured with the second respondent Insurance Company. The second



C.M.A.No.3091 of 2021

WEB COPY

respondent Insurance Company is liable to pay the entire compensation to the claimant.

11.Insofar as the quantum of compensation is concerned, the tribunal after elaborately discussing the factual aspects awarded a sum of Rs.40,000/- for pain and sufferings, Rs.15,000/- for attender charges, Rs.5,000/- for transportation, Rs.10,000/- for extra nourishment, Rs.1,50,000/- for disability, Rs.2,42,194/- for medical expenses, Rs.36,000/- for loss of earnings and arrived at a total compensation of Rs.4,98,194/- and directed that the first appellant claimant is entitled to Rs.1,49,458/- [after deducting a sum of Rs.3,48,736/- which is 70% of Rs.4,98,194/-] with interest at the rate of 9% p.a. from the date of petition till the date of deposit.

12.The accident is of the year 2016. Hence, this Court is of the opinion that the amount awarded under the head pain and sufferings is low and this Court is inclined to enhance the amount awarded under the said head. Accordingly, the amount awarded for pain and sufferings is enhanced to Rs.50,000/- from Rs.40,000/-. The amount awarded under the other heads, in the opinion of this Court are just



C.M.A.No.3091 of 2021

and reasonable and the same are confirmed. The interest of 9% awarded by the Tribunal, in the opinion of this Court is high and hence, this Court is inclined to reduce the interest and accordingly the same is reduced to 7.5% p.a. from 9% p.a.

13. Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Pain and sufferings	Rs. 40,000/-	Rs. 50,000/-
2.	Attender charges	Rs. 15,000/-	Rs. 15,000/-
3.	Transportation	Rs. 5,000/-	Rs. 5,000/-
4.	Extra nourishment	Rs. 10,000/-	Rs. 10,000/-
5.	Disability	Rs.1,50,000/-	Rs.1,50,000/-
6.	Medical expenses	Rs.2,42,194/-	Rs.2,42,194/-
7.	Loss of earnings	Rs. 36,000/-	Rs. 36,000/-
	Total	Rs.4,98,194/-	Rs.5,08,194/-

14. The injured claimant is the first appellant. Since he died during the pendency of this appeal, his wife and son are brought on record as appellants 2 and 3 respectively and his daughter is brought on record as the fifth respondent in this appeal.



C.M.A.No.3091 of 2021

WEB COPY

15.The appellants 2 and 3 and the fifth respondent being the daughter of the first appellant are entitled to total compensation of Rs.5,08,194/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. Out of Rs.5,08,194/-, the second appellant is entitled to a sum of Rs.3,08,194/-, the third appellant is entitled to a sum of Rs.1,00,000/- and the fifth respondent is entitled to a sum of Rs.1,00,000/-.

16.The civil miscellaneous appeal is partly allowed. The judgment and decree dated 23.03.2021 passed by the Motor Accidents Claims Tribunal, (Special District Judge), Erode, in M.C.O.P.No.437 of 2019, is modified to the above extent.

17.The second respondent Insurance Company is directed to deposit the modified/ enhanced award amount before the Tribunal, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the appellants 2 and 3 and the fifth respondent are permitted to withdraw their respective shares



C.M.A.No.3091 of 2021

as apportioned by this Court, along with accrued interest and costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal.

18.The appellants 2 and 3 and the fifth respondent shall not be entitled to any interest for the period of delay, if any, in filing/ representing the appeal. The appellants 2 and 3 and the fifth respondent are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Motor Accidents Claims Tribunal, (Special District Judge), Erode, shall disburse the compensation amount upon production of certified copy showing proof of payment of Court fee by the appellants 2 and 3 and the fifth respondent.

19.The civil miscellaneous appeal is partly allowed. No costs.

03.12.2024

pri

Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal,

10/11



(Special District Judge), Erode.

WEB COPY



C.M.A.No.3091 of 2021

M.DHANDAPANI,J.
pri

C.M.A.No.3091 of 2021

03.12.2024