



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.2992 of 2021

1.Megurunnisha @ Megurnnisha Begam
2.Syed Abdul Rahman
3.Minor.Abdul Kathar Basha
(Minor petitioner 3rd appellant rep.by NF
mother 1st appellant)

...Appellants

.Vs.

1.Kandhasamy
2.United India Insurance Company Limited,
Rep.by its Divisional Office - II (HUB),
No.104-A, Peramanoor Main Road,
Salem-7.
3.Thangamani
4.Manj Parkavi
5.Ranjoorya

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 challenging the judgment and decree dated 03.07.2021 made in M.C.O.P.No.480 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.



For Appellant : Mr.S.P.Yuvaraj
For R1 : Died
For R2 : Mrs.I.Malar
For R3 to R5 : No appearance

J U D G M E N T

The claimants are the appellants herein seeking enhancement of compensation on the ground of exoneration of liability, on the point of rash and negligence and also on the quantum.

2. For the sake of convenience, the parties are referred as per their ranking before the trial Court.

3. The factum of accident, manner of accident, rash and negligent on the part of the driver of the offending vehicle and vehicle being insured with the second respondent/Insurance company are not in dispute. Accordingly, the findings rendered by the Trial Court with regard to negligence are hereby confirmed.

4. On the point of quantum, both the parties are heard.

5. The claim petitioner is the wife of the deceased filed the above claim petition in M.C.O.P.No.480 of 2020 claiming compensation for the pecuniary loss sustained by her due to the death of her husband in the road



transport accident on 30.12.2018.

WEB COPY

6. Based upon the oral evidence of P.W.2 and also the evidence of R.W.1 Shanthi-Assistant from the road transport R.T.O office, the tribunal has pointed out that since the driver was not having valid license on the date of the accident, has fixed 40% of the contributory negligence and the same is now challenged in the appeal.

7. Considering the oral evidence of P.W.2, I find that the deceased was riding a motorcycle bearing Registration No.TN 39 U 1740 in Bhavani to Erode main Road, near Mahathma textile Godown, from north to south, at that time, the driver of the four wheeler lorry drove in a rash and negligent manner in the same direction and hit behind the two wheeler in which he was thrown out and subsequently lorry ran over on his head and he died on the spot and hence I find that the contributory negligence fixed upon the two wheeler is duly, legally unsustainable as to the manner of the accident as spoken by the authorized witness P.W.2. In the absence of any positive evidence in favour of the Insurance Company to show that the deceased has contributed to the accident, the 40% contributory negligence which is fixed only on the basis of non-possession of valid driving license by the deceased is hereby set aside.

8. It remains to be stated that merely because the person does not



possess valid driving license that does not gives license to the other motor vehicle driver to kill him in the road transport accident. Accordingly, this Court is of the considered view that the accident has taken place due to the rash and negligent driving of the driver of the lorry which is insured with the second respondent-Insurance company and hence the 100% negligence is fixed on the driver of the lorry.

9. The learned counsel for the second respondent has drawn my attention to the finding of the trial Court that there is a pay and recovery. Hence, the same may be sustained on the point of quantum of compensation on the date of the accident .

10. On the date of the accident, the deceased was aged about 52 years as per Ex.P2 and notional income is fixed at Rs.15,000/- as per **[Sarala Verma and Others Vs. Delhi Transport Corporation and another]**, multiplier '11' is to be adopted. As per the decision of the Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 601**, 10% future prospectus has to be added since there are 3 dependents, 1/3 of deduction has to be made. Accordingly, the pecuniary loss sustained by the family is re-assessed as follows:-

$15000 + 10\% \text{ of future prospectus } \times 12 \times 11 \times 2/3 = \text{Rs.}14,52,000/-$



WEB COPY

11. Taking into consideration the fact that the first claimant is the widow of the deceased, she is entitled for Rs.20,000/- towards loss of consortium, as awarded by the Tribunal, is hereby enhanced to Rs.40,000/- The claimants 2 & 3 are entitled for loss of love and affection at Rs.20,000/-each is hereby enhanced to Rs.75,000/- each.

12. The Tribunal had not awarded any amount towards transportation charges and the same is hereby awarded at Rs.15,000/-.

13. Accordingly, Rs.15,000/- is awarded towards loss of estate.

14. The amount awarded by the Tribunal towards funeral expenses at Rs.25,000/- is hereby reduced to Rs.15,000/-

15. Accordingly, the award of the Tribunal in M.C.O.P.No.480 of 2019 is modified as follows:



<i>Sl. No.</i>	<i>Particulars</i>	<i>Amount granted by the Tribunal</i>	<i>Amount granted by this Court</i>
1.	pecuniary loss	Rs. 7,92,000/-	Rs.14,52,000/-
2.	Loss of consortium	Rs. 20,000/-	Rs. 40,000/-
3.	Loss of funeral expenses	Rs. 25,000/-	Rs. 15,000/-
4.	Transportation charges		Rs.15,000/-
5.	Loss of Love and affection	Rs. 60,000	Rs.1,50,000/-
6.	Loss of Estate	----	Rs.15,000/-
	Total	Rs. 8,97,000/-	Rs. 16,87,000/-

The compensation awarded by the Tribunal is enhanced from Rs.8,97,000/- to Rs.16,87,000/- which shall carry interest at the rate of 7.5% per annum.

13. In the result,

(i) The Civil Miscellaneous Appeal is allowed in part. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.8,97,000/- to Rs.16,87,000/-

(iii) The Insurance Company is directed to deposit the compensation of Rs.16,87,000/-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.No.480 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem, within a period of twelve weeks



from the date of receipt of a copy of this order.

WEB COPY

(iv) On such deposit being made, the first appellant/claimant/wife is permitted to withdraw her share of the amount and apportionment of award amount as ordered by the Tribunal. The appellants/claimants shall pay necessary additional court fee, if any, on the enhanced compensation.

(v) As far as the share of the minor claimant 3 is concerned, the same shall be invested in any Nationalised Bank in an interest bearing fixed deposit and the interest thereon shall be withdraw by the first claimant once in three months for the welfare of the minors and the said deposit shall be renewed periodically till they attain majority. Apportionment award amount as ordered by the Tribunal is kept intact.

20.02.2024

nvi

Index : Yes/No

Speaking/non-speaking order

To

1. The Special District Judge, Salem.
2. The Section Officer,
V.R.Section, High Court, Chennai.



RMT.TEEKAA RAMAN,J.,

nvi

Judgment in
C.M.A.No.2992of 2021



WEB COPY



20.02.2024