IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.3617 of 2021

1. Mani
2. Sasikala
3. Maheshraj
4. Priya
5. Mahendran ... Appellants 1 to 5 / Claimants

Vs.

1. M/s. Carzonrent India Pvt. Ltd.,
E.No.16, Hosur Cross Road, Hosur,
Behind BSNL Office,
Bangalore – 560 008.

2. The Manager
Royal Sundaraem Gen. Ins. Co. Ltd.,
No.127, 2nd Floor, "Natesan Tower"
Ellaipillaichavadi,
Pondicherry – 605 005. ... Respondents / Respondents

3. Periyanayagi ... 3rd Respondent/ 6th Claimant

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order dated 27.02.2020 passed in M.C.O.P. No. 115 of 2018 on the file of Special District Judge, Motor Accident Claims Tribunal at Villupuram.

For Appellants	:	M/s. M.S. Umesh (for M/s. P. Dinesh Kumar)
For R1	:	NA
For R2	:	NA
For R3	:	Given up

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JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant challenging the contributory negligence fixed on the deceased Gopi, for the accident taken place on 25.12.2017 and seeking enhancement of compensation awarded in M.C.O.P. No. 115 of 2018, dated 27.02.2020 on the file of Special District Judge, Motor Accident Claims Tribunal at Villupuram.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The case of the claimants is that on 25.12.2017, the deceased Gopi and his four Office colleagues, walking towards their room from their Office and crossing the Krishnagiri to Hosur National Highway road at Bathlapalli, at that time, a Renault Duster car bearing Registration No.KA-

03-AC-2206 driven by its driver in a rash and negligent manner, dashed against four persons including Gopi. In the accident, the deceased Gopi sustained grievous injuries and two other perosns were died on the spot. Subsequently, the deceased Gopi also succumbed to injuries at Hosur Government Hospital. A criminal case was registered against the drvier of the car in Cr.No.662/2017 U/s.279, 304(a) of IPC on the file of Hudco Police station. The deceased Gopi herein was aged about 22 years and a B. Pharm graduate and was getting a stipend of Rs.10,000/- per month by working in Mylan Laboratories Limited, Hosur. The 1st and 2nd claimants are the parents and claimants 3 to 5 are the brothers and sister and 6th respondent herein is the grand mother of the deceased Gopi, have come forward with a claim petition seeking compensation for a sum of Rs.50,00,000/- by invoking section 166 of the Motor Vehicles Act, 1988.

4. The first respondent is the owner of the car has filed a counter and disputed the manner in which the accident has taken place and submitted that already the car is insured with the second respondent – insurance company herein, hence the second respondent is liable to indemnify the first respondent and to pay any compensation to the

claimants.

5. The second respondent – insurance company has filed a counter and contended that the deceased has suddenly crossed the road without observing due care and caution, which resulted in accident. The insurance company also disputed the age, income, occupation of the deceased herein and dependency of the claimants.

6. The Tribunal after considering the pleadings and evidence placed on record has held that the driver of the car has driven it in a rash and negligence manner and dashed against the pedestrian, who were also negligently crossed the road. The Tribunal further held that the deceased contributed to the extent of 15%, since the deceased and his friends crossed the National Highway without taking due care and caution. The Tribunal has also quantified the compensation and awarded Rs.14,39,220/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization and also held that the grand mother of the deceased is not a dependent and she is not entitled to get any compensation.

7. Aggrieved over the contributory negligence fixed on the

deceased Gopi and also for enhancement of compensation, this appeal has been filed by the claimants. The respondents have not filed any appeal.

8. The learned counsel for the claimants submitted that the Tribunal without any proper evidence has fixed the contributory negligence to the extent of 15% on the deceased, which is not permissible and the compensation awarded under various heads are also not in accordance with the norms followed by this Court, more particularly, loss of income is not properly fixed and prays to modify the same.

9. I have considered the submissions made on both sides and perused the materials placed on record.

10. In the award, the Tribunal has held that, the P.W.2 – eye witness has admitted in the cross examination that the place, where the accident has taken place is not a place for pedestrian crossing. Further taking note of the F.I.R and also the Ex.R.4 – Rough Sketch Magazr produced by the Police after investigation, the Tribunal has held that the deceased Gopi has crossed the National Highway without any due care and

caution, thereby, he contributed to the accident.

11. P.W.2 - eyewitness, stated that place, where accident has taken place is not marked as pedestrian crossing but, it is the only place available for crossing the road. The rough sketch also shows that there was a divider, dividing the National Highway and in the middle there is a small gap ear-marked and facilitating the persons to cross the road. Since, only place available to cross the highway is the gap provided in the median of highway and in the absence of any dedicated 'Zebra crossing' earmarked for crossing the road for pedestrians, the deceased and others have to use only the gap provided for crossing the road. Therefore, the finding of the Tribunal that the place, where accident has taken palce is not the place for crossing is not proper.

12. The Tribunal has also held that the deceased has to take extra precautions at the time of crossing the road. Admittedly, the accident has taken place at the night time at about 11:15 PM and group of persons were crossing the road, naturally the driver of the car should have been more alert and driven the car with due care and caution at the crossing area. Ex.P.4 – rought sketch also shows that even though the accident has taken place in a

National Highway, shops, hotels and vegetable markets were situated on both sides of the road, hence the people would naturally use to cross the road, hence this Court is of the view that entire negligence shall be fixed only on the driver of the car and the contributory negligence fixed on the deceased, who has crossed the road in the place, where pedestrian crossing is not available is not proper and the contributory negligence fixed on the deceased herein is liable to be set aside.

13. As far as the quantum of compensation is concerned, the Tribunal has accepted the income claimed by the claimants, however, it is stated before this Court that, the deceased was only getting Rs.10,000/- as stipend, at the time of accident and the Tribunal has not taken note of the income that he would have earned, if he was appointed as a permanent employee. Even though, the Tribunal after accepting the income of the deceased has not fixed the very same amount of Rs.10,000/- instead it has fixed Rs.11,000/- as the notional monthly income and awarded loss of income. This Court finds no infirmity in the above fixing of notional income of the deceased and the same is hereby confirmed.

14. The next contention raised by the learned counsel for the claimants is with respect to the deduction of 50% from the income of the deceased towards his personal and living expenses. The Hon'ble Apex Court in ***Sarla Verma and others*** Vs. ***Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]*** held in paragraph 15 as follows:

> *"15 . Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."*

15. Based on the above observations, the brothers and sister

would not be a dependent of the deceased unless contra evidence is produced. Evidence placed on record shows that the claimants 3 to 5 are elders and no evidence produced to show dependancy, hence they could not be termed as a dependents on the income of the deceased, who is youngest in the family. In the evidence of P.W.1, it is stated that due to sudden demise of the deceased, the marriage prospectus of the fourth claimant and educational prospectus of third and fifth claimants has been affected. However, there is no evidence placed on record to show that how the same has been affected, especially they are all educated and elder to the deceased. The loss of marriage prospectus of siblings could not be termed as loss of dependency, since the father and mother of the claimants 3 to 5 are alive, hence they cannot claim that they are dependents of the deceased herein. Accordingly, this Court accepts the deduction of 50% made by the Tribunal towards the personal and living expenses of the deceased is proper, accordingly, the compensation of Rs.16,63,200/- fixed by the Tribunal under the head loss of income is hereby confirmed.

16. The Tribunal has awarded Rs.15,000/- each under the conventional head loss of estate and funeral expenses and the same is

hereby confirmed. However, the Tribunal has not awarded compensation under the head loss of consortium. The Hon'ble Apex Court in ***United India Insurance Co. Limited v. Satinder Kaur and Ors. [MANU/SC/0500/2020 : (2021) 11 SCC 780]*** and ***Magma General Insurance Co. Ltd., vs Nanu Ram [2018 ACJ 2018]*** held that, all the claimants are entitled for consortium. Hence, this Court is inclined to grant the claimants, consortium of Rs.40,000/- each to the parents of the deceased Gopi as per the Apex Court judgments stated supra.

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

S. No	**Description**	**Amount awarded by Tribunal (Rs)**	**Amount awarded by this Court (Rs)**	**Award confirmed or enhanced or reduced**
1.	Loss of income	16,63,200/-	16,63,200/-	Confirmed
2.	Loss of consortium	---	80,000/-	Granted
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	16,93,200/-	17,73,200/-	Enhanced
	Deduction of 15% contributory negligence	2,53,980/-	---	Set aside

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
	Total Compensation	14,39,220/-	**17,73,200/-**	**Enhanced**

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,39,220/- is hereby enhanced to **Rs.17,73,200/- [Rupees Seventeen Lakh Seventy Three Thousand and Two Hundred only]** together along 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 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.115 of 2018 on the file of the Special District Judge, Motor Accidents Claims Tribunal, Villupuram. 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 Accounts of the claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

21.02.2024

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Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Special District Judge,
   Motor Accident Claims Tribunal,
   Villupuram.

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

K. RAJASEKAR, J.

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