



CMA.No.3194 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.3194 of 2024

1. Latha
2. Pavendan
3. Thenmozhi
4. Silambarasan
5. Visalachi

...Appellants

Vs.

1. Devaraj
2. The Manager,
United India Insurance Company Ltd.,
Divisional Office, Muthuru, 1st Floor,
Kumbakonam, Thanjavur District.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award against the judgment and decree dated 17.03.2021 and made in M.C.O.P.No.70 of 2019 on the file of the MCOP Tribunal, Principal District Court, Ariyalur.

For Appellants : M/s.I.Manisha

For Respondents : Mr.J.Chandran for R2



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JUDGMENT

Challenging the judgment and decree dated 17.03.2021 passed in M.C.O.P.No.70 of 2019 on the file of the MCOP Tribunal, Principal District Court, Ariyalur, the claimants have filed the above appeal seeking enhancement of compensation.

2. It is the case of the claimants that, on 20.09.2016 at about 11:15 am, one Murugan was riding his two wheeler bearing Regn.No.TN 61 E 7284 along with the deceased as a pillion rider, at that time a vehicle bearing Regn.No.TN 49 T 9523 driven by the driver of the first respondent insured with the appellant / insurance company came in a rash and negligent manner and dashed the deceased / pillion rider, due to which, the deceased sustained grievous injuries and died on the way to hospital. Thereby, the appellants / dependents of the deceased, who are the dependents of the deceased have filed a claim petition in MCOP.No.70 of 2019 claiming a compensation of Rs.30,00,000/-.

3. Before the Tribunal, the claimants examined two witnesses viz. P.W.1 and P.W.2 and marked Exhibits P.1 to P.7 and on behalf of the



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respondents, they examined R.W.1 and no documents were marked on their behalf. After trial, the Tribunal, on appreciation of oral and documentary evidence awarded Rs.9,96,697/- after deducting 15% contributory negligence on the part of the deceased for non- wearing of helmet towards compensation for the death of the deceased. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have come up with this appeal seeking enhancement of compensation and as against the contributory negligence fixed on the part of the deceased, the claimants have come up with this appeal.

4. Learned counsel for the appellants submitted that the above said accident happened solely due to the rash and negligent driving on the part of the driver of the 1st respondent's vehicle and the accident is of the year 2016 and at the time of accident, the deceased was only aged about 45 years, who was working as a Maison earning not less than a sum of Rs.18,000/- per month, however, the tribunal had taken the notional income of the deceased as Rs.7,000/-, which is very meagre and the same is contrary to the ratio laid down by the Hon'ble Apex court in catena of decisions and thereby, the same has to be interfered with. Further, the



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compensation awarded under other heads are also on the lower side and the same needs to be enhanced. He further submits that the deceased travelled as a pillion rider in the vehicle driven by one Murugan. More particularly, the said vehicle was parked near a petrol bunk. Thereby, the driver of the first respondent's vehicle had driven the said vehicle in a rash and negligent manner and dashing the parked vehicle in which the deceased was seated and in order to prove the negligence, the manner in which the accident had happened, the claimants examined P.W.2. However, in order to disprove the same, the second respondent has not examined any independent any eye witness on their behalf and without considering the oral and documentary evidence, the Tribunal has fastened 15% contributory negligence for a parked vehicle on the part of the deceased which is wholly unsustainable.

5. The learned counsel for the appellants placed reliance on the judgment of the Hon'ble Apex Court in ***Mohammed Siddique & Another Versus National Insurance Company [CDJ 2020 SC 049]*** wherein it was held that in the absence of any evidence to show that wrongful act on the part of deceased victim contributed either to the



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accident or to the nature of injuries sustained, the victim could not have been held guilty of contributory negligence. In the present case on hand there was no wrongful act on the part of the deceased and more particularly, when the vehicle was parked, it cannot be said that the pillion rider / deceased contributed to the said accident, towards non-wearing of helmet. However, without considering the same the Tribunal has fixed 15% contributory negligence on the part of the deceased which is wholly unsustainable.

6. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, after deducting 15% contributory negligence on the part of the deceased which does not require any interference. Accordingly, he prayed for dismissal of the appeal.

7. Heard the learned counsel for the appellant and the learned counsel for the second respondent / insurance company.



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8. On a perusal of the judgment of the Hon'ble Apex Court in ***Mohammed Siddique & Another Versus National Insurance Company [CDJ 2020 SC 049]*** reveals that unless there is any evidence to show the wrongful act of on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. In the present case on hand it is the contention of the claimants that the accident had happened only when the vehicle was parked and in order to prove the negligence the claimants examined P.W.2, however, in order to disprove the same, no independent eye witness has been examined on behalf of the insurance company. When the victim has not contributed to the accident, the fixation of 15% contributory negligence on the part of the deceased for non-wearing of helmet more particularly, when the vehicle in question itself was parked is wholly unsustainable. Hence, the negligence fixed on the part of the deceased is set aside.

9. Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2016 and at the time of accident,



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the deceased was aged about 45 years and he was working as a Mason however, the Tribunal had fixed the notional monthly income at Rs.7,000/-, which is on the lower side. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459***, and also considering the age of the deceased as also the claimants, fixing a notional income of Rs.14,000/- and adding future prospects at 25%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680***, the income per month is quantified at Rs.17,500/- (14,000 + 3,500) and after deducting 1/4th towards personal expenses, the monthly income of the deceased would be at Rs.13,125/- (Rs.17,500 – 1/3rd of Rs.17,500) and as per the Judgment of the Hon'ble Apex Court in *Sarla Verma and others Vs. Delhi Transport Corporation* and another reported in 2009 (2) TN MAC 1 (SC), the right multiplier to be adopted is '14' and hence, the loss of income would be at Rs.22,05,000/- (Rs.13,125 x 12 x 14).

10. No amount has been awarded by the Tribunal under the head



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loss of love and affection, hence this Court grants a sum of Rs.1,60,000/- to the appellants 2 to 5, in which each of them are entitled to a sum of Rs.40,000/-. Insofar as the compensation awarded under the other heads are concerned, this Court is of the view that the compensation awarded under other heads are just and reasonable and the same does not requires interference of this Court.

11. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of income	11,02,584/-	22,05,000/- (enhanced)
Loss of consortium	40,000/-	40,000/-
Loss of love and affection	-	1,60,000/-
Loss of estate	15,000/-	15,000/-
Loss of funeral expenses	15,000/-	15,000/-
Total	11,72,584/-	24,35,000/-
After deducting 15% contributory negligence	9,96,697/-	-

12. Accordingly, this Civil Miscellaneous Appeal stands allowed in



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part and the impugned award passed by the Tribunal in MCOP.No.70 of 2019 is modified by enhancing the compensation amount from Rs.9,96,697/- to **Rs.24,35,000/-**. The 2nd respondent Insurance is directed to deposit the said amount to the credit of MCOP.No.70 of 2019 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment.

13. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants/claimants through RTGS within a period of two weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. It is underscored that the appellants are not entitled to any interest for the default period, if any. The compensation awarded by this Court shall be apportioned among the appellants equally, with proportionate interest and costs. No costs.

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NCC : Yes/No

Speaking Order : Yes/No



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M.DHANDAPANI, J.

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To:

1. MCOP Tribunal, Principal District Court, Ariyalur.
2. The Section Officer,
V.R. Section, High Court, Madras.

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