



CMA.No.3199 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

CORAM

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

CMA.No.3199 of 2024

1. Lakshmi
2. Rajakumari
3. Santhoshkumar
4. Sundrambal ...Appellants

Vs.

1. Prabhu
2. The Manager, New India Assurance Company Ltd.,
Ariyalur Micro Office (730906), No.23-A,
Perambalur Main Road,
Ariyalur Taluk and District. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, seeking to enhance the compensation amount and fix the entire liability on 2nd respondent made in Judgment and decree dated 29.01.2021 made in M.C.O.P.No.185 of 2019 on the file of the MCOP Tribunal, Additional District Sessions Court, Ariyalur by allowing this Civil Miscellaneous Appeal.

For Appellants : Ms.L.Manisha

For R2 : Mr.J.Chandran



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JUDGMENT

Challenging the judgment and decree dated 29.01.2021 made in M.C.O.P.No.185 of 2019 on the file of the Motor Accident Claims Tribunal, Additional District Sessions Court, Ariyalur, the claimants/appellants have come up with this appeal.

2. Mr.J.Chandran, learned counsel takes notice on behalf of the 2nd respondent. In view of the consent expressed by the learned counsel on either side, this appeal is taken up for final disposal at the admission stage itself.

3. Since the 1st respondent remained exparte before the tribunal, notice to the 1st respondent is dispensed with.

4. The case of the appellants is that, on 29.03.2019 at about 08.00 am., one Manikandan was riding his two-wheeler bearing registration No.TN 46 P 7819 with his friends namely, Paramasivam, and Rajalingam as pillion riders. They were traveling along the Sendurai to Jayankondam



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main road from east to west direction and stopped the two wheeler on left side of the Ponparappi bus stop and they were talking each other, at that time, the 1st respondent/driver drove the Tipper lorry bearing registration No.TN 46 U 6009 in rash and negligent manner with great speed and dashed against all the three persons. Due to the impact of the said accident, the 1st appellant's husband and Paramasivam were struck between the lorry's tires and died on the spot and the said Manikandan sustained grievous injuries all over his body. Thereby, the appellants, who are the dependents of the deceased Rajalingam filed a claim petition in MCOP.No.185 of 2019 claiming a compensation of Rs.50,00,000/-. Before the Tribunal, on behalf of the appellants, the 1st appellant was examined herself as P.W.1, eye witness was examined as P.W.2 and marked Exhibits P.1 to P.12 and on the side of the respondents, the person who drove the two-wheeler was examined as R.W.1 and marked exhibits R1 to R4 . After trial, the Tribunal, on appreciation of oral and documentary evidence, came to a conclusion that the accident occurred due to rash and negligent driving of the driver of the 1st respondent vehicle. Since the driver of the 1st respondent lorry did not possess a valid driving licence and fitness certificate for the vehicle, the Tribunal



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has directed the 2nd respondent to pay the compensation to the appellants and recover the same from the owner of the vehicle. After holding so and placing reliance upon the judgment of the Hon'ble Apex Court reported in **2020(1) TN MAC 161 (SC)**, the tribunal observed that at the time of accident, three persons were traveled in the two-wheeler and therefore, all three persons have contributed to the accident and directed to deduct 10% of compensation amount awarded to the appellants. Being not satisfied with the quantum of compensation awarded by the Tribunal and also the deduction of 10% of the compensation amount, the appellants/claimants have come up with this appeal seeking enhancement of compensation.

5. Learned counsel for the appellants submitted that as far as the liability is concerned, as per the deposition of R.W.1 and as per the Exhibit P1 (FIR) all three persons who were traveled and parked the two-wheeler under the tree and talking with each other. At that time, the driver of the 1st respondent's vehicle insured with the 2nd respondent, drove the vehicle in a rash and negligent manner and dashed against the persons who were talking with each other, thereby, the accident was



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occurred. However, the claims tribunal, on the evidence of the rider of the two wheeler, namely R.W.1, who deposed that he rides his two wheeler from east to west direction and he lost his control and fell down on the left side and the deceased persons were fell down on the right side, thereby, the 1st respondent's vehicle ran over the deceased persons. In view of the deposition of R.W.1, the tribunal fastened the liability of 10% for not wearing the helmet by the pillion riders, which is not sustainable one.

6. As far as the quantum of compensation is concerned, the learned counsel for the appellants would submit that the accident is of the year 2019 and at the time of accident, the deceased was aged about 48 years and was running a cattle farm and also doing agriculture, was earning a sum of Rs.30,000/- per month, however, the tribunal had taken the notional income of the deceased at Rs.7,500/-, 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, he would submit that, no amount was awarded under the head of “Loss of love and affection” and the same is required to be awarded.



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Accordingly, he prayed for appropriate orders.

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7. Per contra, the learned counsel appearing on behalf of the 2nd respondent-Insurance Company contended that, by considering all the relevant documents, the Tribunal has rightly deducted 10% of the compensation amount for not wearing the helmet by the deceased/pillion riders. Moreover, the total compensation awarded by the tribunal is just and reasonable, which does not require any interference. Accordingly, he prays for dismissal of the appeal.

8. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

9. In the present case, the deceased Rajalingam and Paramasivam, who were traveled as pillion riders along with RW1, who drove the two-wheeler. From the Exhibit P1-FIR, it reveals that all the three persons were standing and talking under the tree and at the time, the accident was occurred. Whereas, the R.W.1, who drove the two wheeler along with



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pillion riders clearly deposed before the claims tribunal about the accident by stating that while driving the two-wheeler, he lost his control and fell down on the left side and the pillion riders/deceased were fell down on the right side. That apart, it is also stated that the deceased/pillion riders did not wear helmet, thereby, the accident was occurred and this fact was elaborately discussed by the Tribunal in its order and deducted 10% of the compensation amount for not wearing the helmet, which cannot be interfered with.

10. Insofar as the quantum of compensation is concerned, this Court is of the considered view that the contention of the learned counsel for the appellants to re-determine the notional income, which appears to be reasonable and also 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 avocation as also the age of the deceased, 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**



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680, the income per month is quantified at Rs.17,500/-. Deducting 1/4th towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.13,125/- per month and the deceased being aged about 48 years, as evidenced from the records, adopting the multiplier of 13 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in *(2009) 6 SCC 121*, the loss of income to the family is arrived at Rs.20,47,500/- = [Rs.13,125/- * 12 * 13].

11. Since no amount was awarded under the head “loss of love and affection”, this Court is inclined to award a sum of Rs.40,000/- each to the appellants 2 to 4. Insofar as the compensation awarded under the others heads are concerned, the tribunal has rightly fixed, which do not require any interference.

12. With regard to pay and recovery, the 1st respondent's vehicle did not possess the fitness certificate of the vehicle/lorry and the driver of the vehicle did not possess the valid driving licence, thereby, the tribunal ordered pay and recovery and the same is confirmed.



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13. 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	9,87,153/-	20,47,500/- (enhanced)
Loss of love and affection (to the appellants 2 to 4)	-	1,20,000/- (awarded)
Loss of consortium	40,000/-	40,000/-
Loss of estate	15,000/-	15,000/-
Funeral Expenses	15,000/-	15,000/-
Total	10,57,153/-	22,37,500/-
Less 10% contributory negligence committed by the deceased		2,23,750/-
Total		20,13,750/-

14. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.185 of 2019 is modified by enhancing the compensation amount from Rs.10,57,153/- to **Rs.20,13,750/-**. The 2nd respondent Insurance is directed to deposit the said amount to the credit of MCOP.No.185 of 2019 along with interest at the rate of 7.5% per annum from the date of



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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. In the above compensation, the 1st appellant is entitled to Rs.8,00,000/- and the 2nd and 3rd appellants are entitled to a sum of Rs.5,50,000/- each and the 4th appellant is entitled to a sum of Rs.1,13,750/- with proportionate interest and costs. 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. No costs.

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NCC : Yes/No

Index : Yes/No

Speaking Order : Yes/No

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To:

1. The Motor Accident Claims Tribunal,
Additional District Sessions Court,
Ariyalur.

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



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M.DHANDAPANI, J.

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