



C.M.A.No.3210 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3210 of 2024

1. Latha
W/o.Vajiravel

2. Vajiravel
S/o.Chinnasamy

3. Karthi
S/o.Vajiravel

... Appellants / Petitioners

Vs.

1. Shanthi
W/o.Ponnusamy

2. The Branch Manager,
The New India Assurance Company Limited,
3rd Party Claim,
No.1, CSI, 2nd Floor, Officers Line,
Near Raymonds Showroom,
Vellore - 632 001.

... Respondents / Respondents



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PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 18.07.2023 made in M.C.O.P.No.192 of 2019 on the file of the Motor Accidents Claims Tribunal, Gudiyatham, Vellore District (in the Court of the Subordinate Judge, Gudiyatham, Vellore District).

For Appellants : Ms.N.Lavanya

For Respondents : Mr.J.Michael Visuvasam for R2

J U D G M E N T

Aggrieved by the compensation awarded by the Tribunal in M.C.O.P.No.192 of 2019, the appellants / claimants have come before this Court challenging the same by filing the present civil miscellaneous appeal.

2. The claimants are the parents and brother of the deceased Gandhi. On 21.06.2016 at about 04.00 pm, when the deceased Gandhi was riding a two wheeler bearing Registration No.TN-20-BB-5087 on Gudiyattam to Paradharami Road near Salaiyoranpatti Village, opposite to Perumal land, a lorry belonging to the first respondent bearing Registration



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No.TN-69-BH-6250 came from the back side and dashed against the two wheeler, as a result of which, the deceased sustained grievous injuries all over his body and admitted in Government Hospital, Gudiyattam. Thereafter, he was referred to Adukkambarai Government Hospital, Vellore for further treatment and died in the hospital. The deceased was aged only 18 years at the time of the accident. Claiming compensation for the death of the deceased Gandhi, his parents and brother, viz., claimants have filed claim petition before the Motor Accidents Claims Tribunal, Gudiyatham, Vellore claiming compensation of Rs.40,00,000/-. The first respondent is the owner of the lorry and the second respondent is the insurer of the lorry.

3. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P1 to P7 were marked. On the side of the second respondent, R.W1 and R.W.2 were examined and Exs.R1 to R3 were marked. The Tribunal, after analysing the oral and documentary evidence available on record, fixed the compensation of Rs.11,33,400/-. Further, fixing 15% towards the contributory negligence on the part of the deceased,



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the Tribunal awarded a sum of Rs.9,63,390/- as compensation to the claimants and directed the second respondent/Insurance Company to pay the same to the claimants.

4. The learned counsel appearing for the appellants / claimants submitted that the Tribunal went wrong in attributing 15% contributory negligence on the deceased on the ground that the deceased did not possess a valid driving license. The learned counsel further submitted that not possessing a valid driving license by itself cannot be a reason to attribute contributory negligence without there being any other material to show that the deceased had in fact contributed negligence resulting in the accident. She further submitted that the compensation awarded under the head love and affection is on the lower side and the same is liable to be enhanced. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

5. The first respondent remained exparte before the Tribunal.



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6. Per contra, the learned counsel appearing for the second respondent / Insurance Company submitted that the Tribunal, taking into consideration all the relevant documents, has rightly fixed the compensation, which does not require any interference. He further submitted that the rider of the motorcycle, i.e., deceased was not having valid driving licence at the time of the accident and therefore, the Tribunal has rightly held that the rider of the motorcycle was also partly responsible for the accident, and fixed 15% contributory negligence on the part of the claimant.

7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

8. The factum of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance



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of the claimants is with regard to the quantum of compensation awarded and the contributory negligence.

9. With regard to the contributory negligence that was fastened against the deceased, admittedly the deceased has no valid driving licence and not insured the vehicle and therefore, the Tribunal has rightly fixed 15% contributory negligence on the deceased and the same does not require any interference of this Court.

10. The next issue is with regard to the quantum of compensation fixed by the Tribunal. Insofar as the loss of love and affection is concerned, the Tribunal has only granted a total sum of Rs.30,000/- for all the claimants. Considering the facts and circumstances of the case, this Court is inclined to enhance the compensation and fix it at Rs.40,000/- for each of the claimants and thereby, the total compensation under this head is enhanced from Rs.30,000/- to Rs.1,20,000/-. The compensation that has been awarded by the Tribunal under the other heads is reasonable and does



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not require the interference of this Court.

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

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1	Loss of dependency	10,58,400/-	10,58,400/-
2	Loss of love and affection	30,000/-	1,20,000/-
3	Loss of funeral expenses	15,000/-	15,000/-
4	Loss of estate	15,000/-	15,000/-
5	Loss of transportation	15,000/-	15,000/-
	Total	11,33,400/-	12,23,400/-
	Contributory negligence 15%	1,70,010/-	1,83,510
	Compensation payable	9,63,390	10,39,890/-



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12. In the result, this Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal at Rs.9,63,390/- is hereby enhanced to Rs.10,39,890/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the entire award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.192 of 2019 on the file of the Motor Accidents Claims Tribunal, Gudiyatham, Vellore District (in the Court of the Subordinate Judge, Gudiyatham, Vellore District). 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 by making proper application before the Tribunal. Insofar as the enhanced compensation is concerned, the claimants will not be entitled for interest for the period of delay of 210 days



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as was ordered by this Court in C.M.P.No.16605 of 2024, dated 18.10.2024.

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The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

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

To

1. The Branch Manager,
The New India Assurance Company Limited,
3rd Party Claim,
No.1, CSI, 2nd Floor, Officers Line,
Near Raymonds Showroom,
Vellore - 632 001.

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



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M.DHANDAPANI, J.

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