



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.2491 of 2022

1.Renuga

2.Santhiya

3.Minor Arunkumar

4.Gowramma

..Appellants

.vs.

1.M/s.Sri Venkatachalapathy Explosives
No.3/00, Somanahally
Mallapuram, Dharmapuri District
Tamil Nadu 636 701.

2.The Branch Manager,
The Oriental Insurance Co., Ltd.,
No.3L, Siddhaveerappa Chetty Street,
Dharmapuri Town, Dharmapuri District,
Tamil Nadu – 636701.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award in judgment and Decree dated 06.12.2021 made in MCOP No.210 of 2021 on the file of the Motor Accident Claims Tribunal and Special District Court for MACT Cases, Krishnagiri.



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For Appellant : Mr.SP.Yuvaraj

For Respondents : Mr.M.Krishnamoorthy for R2

JUDGMENT

The claimants not being satisfied with the quantum of compensation awarded by the Tribunal have filed this appeal seeking for enhancement of compensation against the Award passed by the Motor Accident Claims Tribunal in MCOP No.210 of 2021, dated 06.12.2021.

2.The case of the claimants is that the deceased Sathanalliyappa was riding his two wheeler on 07.01.2020 at Rayakottai to Kelamangalam road and at about 14.30 hours when the vehicle was crossing Vellisanthai bus stop, the offending vehicle viz., the Eicher lorry was driven in a rash and negligent manner and it hit the two wheeler and as a result, the deceased was thrown out of the two wheeler and he sustained grievous head injuries and he died on the spot. An FIR came to be registered in Crime No.06 of 2020 against the driver of the offending vehicle. It is under these circumstances, the claimants being wife, daughter, son and the mother of the deceased filed the claim petition before the Tribunal seeking for payment of compensation.



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3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the lorry. However, the Tribunal also considered the fact that the deceased was riding the two wheeler without a valid driving licence and the same was in violation of the rules and therefore, the Tribunal attributed 10% contributory negligence as against the deceased.

4.Having rendered the above finding, the Tribunal proceeded to fix the total compensation at Rs.16,07,584/- in the following manner:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency	14,17,584
2.	Loss of Estate	15,000
3.	Funeral Expenses	15,000
4.	Loss of Consortium (P1 to P4 Rs.40,000/- x 4 = Rs.1,60,000/-)	1,60,000
	Total	16,07,584

5.Out of this compensation, 10% was reduced and the Insurance Company was directed to pay the balance amount of a sum of Rs.14,46,826/- with interest at the rate of 7.5% per annum.



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6.The claimants aggrieved by the quantum of compensation fixed by the Tribunal have filed these appeal seeking for enhancement of compensation.

7.Heard Mr.SP.Yuvaraj, learned counsel appearing on behalf of the appellant, Mr.M.Krishnamoorthy, learned counsel appearing on behalf of the 2nd respondent.

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

9.This Court has also carefully gone through the Award passed by the Tribunal.

10.The focus of the submission made by the learned counsel for the appellants is with regard to the monthly income that was fixed by the Tribunal. The learned counsel also questioned the 10% contributory negligence that was fixed by the Tribunal on the deceased after having rendered a finding that the negligence was attributable only to the driver of the lorry.

11.Per contra, the learned counsel for the Insurance Company submitted that the Tribunal has fixed a reasonable compensation and sufficient reasons have also



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been assigned for attributing contributory negligence on the deceased and therefore, the award passed by the Tribunal does not warrant the interference of this Court.

12. In the case in hand, the claimants put forth a plea that the deceased was working as a Mason. He was aged about 45 years at the time of his demise and the accident had taken place in the year 2020. The Tribunal while discussing the aspect of negligence, took into consideration the evidence of PW1 and PW2 and also the evidence of RW1. On appreciation of the same, it was found that the accident had occurred only due to the rash and negligent driving on the part of the driver of the lorry belonging to the 1st respondent. Thereafter, the Tribunal proceeded to attribute contributory negligence against the deceased on the ground that he was not possessing a valid driving license and the same is in violation of the relevant rules.

13. In the considered view of this Court, if the contributory negligence is going to be imposed against the deceased, it must be shown that not possessing the driving licence had actually contributed to the accident. The Apex Court had an occasion to deal with this issue and it was held that driving without a licence by itself cannot lead to an assumption that there was negligence on the driver and is said to have contributed to the negligence. Useful reference can be made to the judgment of the Hon'ble Supreme Court in the case of ***Dinesh Kumar J vs. National Insurance***

Company Limited and others reported in ***2018 1 SCC 750***.



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14. Taking cue from the above judgement, this Court holds that the deceased not holding a valid driving licence by itself is not a ground to attribute contributory negligence on the deceased and this is more so since the Tribunal has come to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the vehicle belonging to the 1st respondent. Hence, the finding of the Tribunal by attributing 10% contributory negligence on the deceased is hereby set aside. Insofar as the income that was fixed by the Tribunal, PW1 who is the wife of the deceased has spoken to the effect that the deceased was working as a Mason. It is too difficult to get evidence for a person who is working as a Mason, since it is considered to be a unorganized sector. Considering the fact that the accident had taken place in the year 2020 and the price index that was prevailing and considering the cost of living, this Court is inclined to fix the monthly income at Rs.15,000/- The deceased was aged about 45 years and therefore, 25% can be added toward future prospects. Thus, the total monthly income can be fixed at Rs.18,750/- (Rs.15,000/- + Rs.3,750/-).

15. In view of the above, the total compensation fixed under the head of 'Loss of dependency' can be worked out to Rs.23,62,500/-. (Rs.18750/- x 12 x 14 x 3/4)



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16. In the light of the above discussion, the compensation awarded by the tribunal is modified as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency	23,62,500
2.	Loss of Estate	15,000
3.	Funeral Expenses	15,000
4.	Loss of Consortium (P1 to P4 Rs.40,000/- x 4 = Rs.1,60,000/-)	1,60,000
	Total	25,52,500

17. The compensation awarded by the tribunal at Rs.16,07,584/- is enhanced to Rs.25,52,500/-. The second respondent insurance company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgement. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is allowed. No costs.

18.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
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N. ANAND VENKATESH., J

ssr

To

The Motor Accident Claims Tribunal and
Special District Court for MACT Cases, Krishnagiri.

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