IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.1937 of 2023

1. R.Dharani

2. Minor.R.Harshita

3. Minor R.Saai Sruthi

4. Jayalakshmi .. Appellants

Vs.

1. S.Ramesh

2. United India Insurance Company Limited,
Motor 3rd Party Hub, Silingi Building,
4th Floor, No.134, Greems Road,
Chennai – 600 006. .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to allow the present appeal award enhanced compensation in judgment and decree dated 10.04.2023 in M.C.O.P.No.4646 of 2019 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellants	:	D.Jeevitha
For R1	:	Set ex-parte
For R2	:	M/s.D.Bhaskaran

JUDGMENT

The claimants who are the wife, two minor daughters and the mother of the deceased Ramesh not being satisfied with the quantum of compensation fixed by the Tribunal and attributing 10% contributory negligence on the deceased, have filed this appeal against the award passed by the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai in M.C.O.P.No.4646 of 2019 dated 10.04.2023.

2. The case of the claimants is that the deceased Ramesh was traveling in an auto rickshaw on 19.04.2019 at Kanniyakumari - Nagercoil Road and when the auto rickshaw was going near the place of occurrence, another auto rickshaw which is the offending vehicle in this case came in the opposite direction and it rammed on the auto rickshaw in which the deceased was traveling and as a result, the deceased was thrown out and he sustained grevious injuries. Unfortunately he succumbed to the injuries. It is under these circumstances, the claim petition came to be filed before the Tribunal.

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving of the offending vehicle. However, the Tribunal found that the deceased was sharing the seat along with the auto rickshaw driver and therefore 10% contributory negligence was attributed against the deceased.

4. The Tribunal thereafter proceeded to determine the total compensation at Rs.22,06,308/- under various heads as follows:-

Annual Income	Rs.2,22,183/-
ADD: 10% Future Prospects	Rs.22,218/-
	Rs.2,44,401/-
Towards Loss of Income / Dependency Rs.2,44,401 x 11 x 3/4	Rs.20,16,308/-
Towards Loss of Estate	Rs.15,000/-
Towards Loss of Consortium Rs.40,000/- (Each) x 4	Rs.1,60,000/-
Towards Funeral Expenses	Rs.15,000/-
Total Compensation	Rs.22,06,308/-
Less: 10% Contributory Negligence	Rs.2,20,630/-
Compensation payable	**Rs.19,85,678/-**

5. Out of this amount, 90% liability was fixed on the respondents and a sum of Rs.19,85,678/- was directed to be paid as compensation along with interest at the rate of 7.5% per annum.

6. The claimants aggrieved by the quantum of compensation fixed by the Tribunal have filed this appeal.

7. Heard the learned counsel for the appellants and the learned counsel for 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. In the instant case, the Tribunal on appreciation of evidence came to a conclusion that nearly nine persons were traveling in the auto rickshaw and the deceased was sharing the seat along with the driver of

the auto rickshaw. Therefore, the Tribunal rightly attributed 10% contributory negligence against the deceased and the same does not require the interference of this Court.

11. The next issue is with regard to the monthly income that was fixed by the Tribunal. While calculating the compensation under the head of Loss of Dependency, the Tribunal had taken into consideration the evidence of PW1 and Ex.P.6 to Ex.P.9. The deceased in this case was a Mechanical Engineer. He was running a business in the name of his wife since the Government was giving some allowance when the business is conducted in the name of a woman. The wife did not have sufficient qualification or experience to run the business which involved manufacturing machines.

12. In view of the same, even the Income Tax Returns were filed in the name of the wife since she was shown as the proprietor of the business concern. The Tribunal after taking into consideration all the above facts, decided to take only 50% from the Gross Total Income that was shown in Ex.P.8. This finding of the Tribunal cannot be sustained. The husband running the business in the name of the wife is a common

feature. This is more so since the business involves manufacturing of machines and admittedly the deceased was a qualified Mechanical Engineer. The same was also spoken by PW1. Ex.P.8 provided the details regarding the Gross Total Income for the Assessment Years 2017-2018 upto 2019-2020. It is also important to take note of the fact that after the demise of the deceased, the business concern itself was closed down and it was not able to be continued. This also shows that the deceased alone was running the business concern.

13. In the light of the above discussion, this Court is inclined to fix the Gross Total Income of the deceased at Rs.3,75,000/- per year. The total loss of Income/Dependency is calculated as follows:

Annual Income fixed	:	Rs.3,75,000/-
Future prospects to be added	:	10%
Notional Annual Income arrived at	:	Rs.3,75,000/- + 10% Rs.4,12,500/-
After deducting 1/4th for personal expenses	:	Rs.3,09,375/-
Multiplier to be adopted	:	11
Loss of Income/Dependency Rs.3,09,375/- X 11	:	Rs.34,03,125/-

14. The compensation that has been fixed under the other heads are reasonable and it does not require interference of this Court. The compensation fixed by the Tribunal is modified as follows:-

Towards Loss of Income / Dependency	Rs.34,03,125/-
Towards Loss of Estate	Rs.15,000/-
Towards Loss of Consortium Rs.40,000/- (Each) x 4	Rs.1,60,000/-
Towards Funeral Expenses	Rs.15,000/-
Total Compensation	Rs.35,93,125/-
Less: 10% Contributory Negligence	Rs.3,59,313/-
Compensation payable	**Rs.32,33,812/-**

15.The compensation awarded by the Tribunal at Rs.19,85,678/- is hereby enhanced to Rs.32,33,812/-. The 2nd respondent is directed to deposit the enhanced compensation together with interest at 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment, if not already deposited. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

N.ANAND VENKATESH, J.

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16.In the result, the Civil Miscellaneous Appeal is partly allowed in the above terms. No costs.

25.06.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The Chief Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

2.The Section Officer,
VR Section,
Madras High Court,
Chennai.

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