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C.M.A.No.3036 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

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1. Arul Kumar
2. Vimal-Minor
3. Pradeep-Minor
- 2nd and 3rd minor petitioners rep. by their father
and next friend the 1st petitioner Mr.Arul Kumar

... Appellants

Vs.

1. M/s.Surface Logistics
No.18/A, Gayathri Nalaya,
4th Cross Street, Basavanapura Main Road,
K.R.Puram, Bangalore, Karnataka 560 036.
2. The United India Insurance Company Ltd.,
No.134, Silingi Building, Greams Road,
Thousand Light West,
Thousand Light, Chennai 600 006.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the decree and judgment dated 17.11.2022 made in M.C.O.P.No.1577 of 2020, on the file of Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellants : Mr.P.Selvaraj

For R1 : Mr.N.Selvarajan

For R2 : Mr.V.Pushpa



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JUDGEMENT

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Challenging the fixation of contributory negligence, fastening the liability and the determination of quantum of compensation awarded by the Tribunal, the appellants/claimants have filed the present appeal.

2. On 28.05.2020 at about 7.05 p.m., while the first appellant's wife was travelling as a pillion rider in a Honda Active Motor cycle bearing Reg.No.TN 11 AS 7366 along with her child/2nd appellant, they were hit by a Container Lorry bearing Reg.No.TN 04 AW 3861, which was driven by its driver in a rash and negligent manner. Due to the said impact, the first appellant's wife sustained grievous injuries all over her body and had succumbed to death on the spot. Hence, the appellants, being the husband and children of the deceased made a claim petition before the Tribunal, claiming a sum of Rs.25,00,000/- as compensation.

3. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.13,44,600/- towards compensation to the appellants while fastening 10% contributory negligence on the part of the rider of the two wheeler. Challenging the same, the appellants have preferred the present



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appeal.

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4. The learned counsel for the appellants would submit that, in the present case, the Tribunal had fastened 10% contributory negligence on the part of the rider of the two wheeler for the reason that there were three persons, travelled in a two wheeler at the time of accident. Hence, the Tribunal took cognizance of this fact and fixed 10% contributory negligence on the part of the appellants. On the other hand, the Tribunal had categorically come to the conclusion that the sole cause for the accident is only due to rash and negligent driving of the lorry driver/first respondent. When such being the case, the Tribunal had fastened 10% contributory negligence merely for statutory violation is not justifiable and it is also against by the law laid down by the Hon'ble Apex Court in the case of *Mohammed Siddique & another Vs. National Insurance Company Ltd., & others*. On relying upon the said judgement, the learned counsel for the appellants contended that contributory negligence of 10% fixed by the Tribunal on the part of the rider of the two wheeler is liable to be set-aside. Further, he submitted that the deceased was well at the time of accident and aged about 34 years, was earning more than a sum of Rs.15,000/- per month as Tailor. However, the Tribunal had fixed the notional monthly income of the deceased at Rs.8,000/-, which is on the lower



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side, hence, he requests this Court to reconsider and enhance the same to a sum of Rs.15,000/- per month, which is just and reasonable.

4.1 The learned counsel for the appellant would further submit that the Tribunal had taken the age of the deceased at 39 years as per the claim statement, however, the Tribunal ought to have taken the age of the deceased as 34 years as per Post Mortem Certificate. Hence, he requests this Court to adopt right multiplier as '16' as per the decision of Hon'ble Apex Court in the case of Sarla Varma. Accordingly, he seeks for appropriate modification and enhancement of the compensation in favour of the appellants.

5. Per contra, the learned counsel for the second respondent vehemently opposed the contentions made by the learned counsel for the appellants and submitted that there is statutory violation since three persons had travelled in a two wheeler, when the seating capacity of the two wheeler is only for two persons. Therefore, the Tribunal is justified in awarding the compensation and fixed 10% contributory negligence on the part of the rider of the two wheeler, which does not requires any interference of this Court. Further, she requests this Court to fix the notional income of the deceased at Rs.13,000/- per month, which would be just and reasonable.



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6. Heard the learned counsel for the appellants and the learned counsel appearing on behalf of the second respondent and perused the materials available on record and on the aspect of liability.

7. The fact and the manner of the accident is not disputed by the parties. The main grievances of the appellants is that, only with regard to the quantum of compensation awarded by the Tribunal and fixing 10% of contributory negligence on the part of the rider of the two wheeler. There is a categorical findings based on the oral and documentary evidence by the Tribunal that the sole cause for the accident is only due to the rash and negligence driving of the lorry driver. Further, the Tribunal has discussed about the violation on the part of the claimants as three persons had traveled in a motor vehicle contrary to the Rules. However, it is to be noted that while examining these aspects, as regards whether travelling three persons on a motor cycle was the only cause for the accident, nothing has been culled out from the side of the Insurance Company to show that there was any imbalance by the rider having two pillion riders, due to which, they had fallen down. But they merely pointed out that there is statutory violation.

8. The statutory violation can be considered only for the purpose of



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imposing fine as contemplated in the statute, otherwise, there is no question of fastening the contributory negligence. This was the view taken by the Tribunal in the case of **Mohammed Siddique** cited supra and the relevant portion is extracted hereunder:

“Therefore, in the absence of any evidence to show that the wrongful act 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. Hence, the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside.”

9. In the above case, the Hon'ble Apex Court has categorically held that reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside. However, in the present case, what was relied by the Tribunal was the Judgment of this Court vide order dated 09.08.2021 in C.M.A.No.1620 of 2021, in a similar case where three persons had traveled in a motor cycle and this Court held as under:

“Though the tribunal has awarded a compensation due to the death of the victim, as there is a contributory negligence on the part of the deceased the compensation is reduced by 10%.”



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10. The Tribunal has extracted only the above para and it is not clear whether really the deceased person who was the rider of the vehicle had contributed for the accident, but fixed contributory negligence of 10% on the part of the rider of the two wheeler. In the event of the mere contribution, this decision would apply. This Court has taken a view merely not wearing helmet and non-possessing licence at the time of accident, if 10% contributory negligence was fixed, it is totally contrary to the law laid down by the Hon'ble Apex Court and all the presumptions can be drawn, the Tribunal has passed an order without taking into consideration that merely not wearing helmet, not having driving licence and travelling more than two persons on a two wheeler are not the cause for the accident. Under these circumstances, this Court is of the view, that fastening 10% contributory negligence on the part of the rider of the two wheeler for not wearing helmet and traveling three persons in a two wheeler, is liable to be set aside. Accordingly, fixing 10% contributory negligence and fastening the liability on the part of the appellants is set-aside and the entire negligence is fastened on the part of the lorry driver/owner of the vehicle which was insured with the Insurance Company/second respondent.



11. As far as the quantum of compensation is concerned, it is claimed by

the appellants that though the deceased was aged about 34 years, was working as a Tailor and was earning more than a sum of Rs.15,000/- per month. Without considering the same, the Tribunal had fixed the monthly notional income of the deceased at Rs.8,000/-, which is on the lower side. Further, the Tribunal has taken 39 years as the age of the deceased as mentioned in the affidavit filed in support of the claim statement, but as per the Court records, i.e. in the Post mortem report, the age of the deceased was mentioned as 34. Except the claim statement, the claimants have not produced any documentary evidence to support their version that the deceased was aged 39 years. In the event if any documentary evidence is produced to support the contention of the claimants, this Court should consider the same based on the oral evidence or any other statement made in the claim statement, if it is corroborated. The Tribunal has taken 39 years as the age of the deceased since it has been mentioned as such in the claim statement. When the statement has not been proved, this Court is of the view that it would be appropriate to rely upon the documentary evidence, i.e. Post Mortem Certificate wherein, it has been mentioned as 34 years. Thus, the age of the deceased has to be considered as 34 years instead of 39 years. Considering the nature of employment of the deceased, though the deceased was a home-maker, it cannot be construed that her services are worthless and



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there was no earning. The role of a homemaker is as important as that of a family member whose income is tangible as a source of livelihood for the family. The activities performed by a home-maker, if counted one by one, there will hardly be any doubt that the contribution of a home-maker is of a high order and invaluable. In fact, it is difficult to assess such a contribution in monetary terms. Therefore, this Court is inclined to re-determine the notional income of the deceased at Rs.15,000/- per month, which would be just and reasonable. Thus, by fixing the notional income of the deceased at Rs.15,000/-; adding future prospects at 40%, as has been held by the Constitution Bench of the Apex Court, the total income per month is quantified at Rs.21,000/-; deducting $\frac{1}{3}$ rd towards her personal and living expenses of the deceased; and adopting the multiplier of '16' (since the deceased was aged about 34 years), the compensation towards "Loss of Dependency" is calculated as under:-

<i>Loss of Income</i>	<i>Amount in Rs.</i>
Notional income (Per month)	15,000
Add: Future Prospects (Rs.15,000 x 40%) (Per month)	6,000
	21,000
Less: Personal expenses ($\frac{1}{3}$ rd) (Rs.21,000/- x $\frac{1}{3}$) (Per month)	7,000
	14,000
Notional income (per annum) (Rs.14,000/- x 12)	16,80,000
Multiplier	16
Total	26,88,000/-



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12. Consequently, the sum of **Rs.13,44,000/-** awarded by the Tribunal under the head of “Loss of Dependency” is hereby modified and enhanced to **Rs.26,88,000/-**.

13. Insofar as the compensation awarded by the Tribunal under various heads are concerned, this Court finds the same to be just and proper and is hereby confirmed.

14. Thus, the total compensation payable to the appellants/claimants under various Heads is modified hereunder:-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Compensation towards loss of dependency	13,44,000/-	26,88,000/- (enhanced)
Funeral expenses	15,000/-	15,000/-
Loss of Estate	15,000/-	15,000/-
Loss of constorium	1,20,000/-	1,20,000/-
Total	14,94,000/-	28,38,000/-
Less 10% contributory negligence	1,49,400/-	-
Total	13,44,600/-	28,38,000/-



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15. Consequently, the total compensation amount of **Rs.13,44,600/-** awarded by the Tribunal is hereby modified and enhanced to **Rs.28,38,000/-** which shall carry interest at the rate of **7.5%** per annum from the date of claim petition till the date of deposit, out of which, first appellant, the husband of the deceased is entitled to a sum of **Rs.8,38,000/-** together with proportionate interest; second and third appellants, the children of the deceased are entitled to a sum of **Rs.10,00,000/-** each together with proportionate interest. As regards the award amount to be disbursed to the minor claimants, the second and third appellants are concerned, on deposit of the award amount being made by the second respondent/Insurance Company, Tribunal shall transfer the entire award amount belonging to the minors, in their name, in any of the Nationalized Bank, in a cumulative interest bearing Account till the minors attains majority, and thereafter, the Tribunal shall take steps to settle the award amount to the claimants in accordance with law.

16. In the result, this Civil Miscellaneous Appeal filed by the appellants/claimants is partly allowed on the following terms:-

(i) The second respondent, Insurance Company is directed to deposit the entire amount awarded by this Court along with interest at the rate of 7.5 %



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p.a., and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

(ii) On such deposit being made by the second respondent/Insurance Company, the Tribunal shall transfer the amount directly to the first appellant bank account through RTGS within a period of three weeks thereon.

iii) The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any.

iv) There shall be no order as to costs.

27.03.2024

Index : Yes / No
NCC : Yes / No
jd

Note: Issue order copy on 30.04.2024.

To

1. The Motor Accident Claims Tribunal,
Chief Judge, Court of Small Causes, Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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Krishnan Ramasamy,J.,

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