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CMA.No.3455 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

C.M.A.No.3455 of 2021

- 1.V.Maruthamuthu
2. M.Balamurugan
3. M.Suresh

.. Appellants/petitioners

/vs/

- 1.S.Guna
2. P.Dhandapani
3. Reliance General Insurance Co.Ltd.,
Sakthi Supermarket, 3rd floor,
No.408, Perundurai road,
Erode – 638 011
Erode Taluk, Erode District.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree made in M.C.O.P.No.44 of 2019 on the file of the Special District Court, MCOP Tribunal, Erode, dated 16.04.2021.

For Appellant ... Mr. Amar D. Pandiya
for M/s.M.Mohamed Riyaz

For Respondents Dismissed as not pressed for R1
& R2 vide order dt 02.08.2024
Mr.C.Bhuvanasundari for R3

JUDGMENT



This Civil Miscellaneous Appeal is filed against the judgment and decree made in M.C.O.P.No.44 of 2019 on the file of the Special District Court, MCOP Tribunal, Erode, dated 16.04.2021.

2. The facts leading to filing of this Civil Miscellaneous Appeal is as follows:-

(i) On 09.01.2019 at about 7 p.m., One Sellammal was travelling as a pillion rider in TVS Moped bearing Regn.No.TN 33 BL 3789 which was driven by her husband, at Ganapathipalayam near Kallukuli, the 1st respondent who drove his moped bearing Regn. No.TN 37 BK 0766, behind the abovesaid TVS moped on the same direction, in a rash and negligent manner, dashed against the TVS moped, in which Sellammal was travelling as a pillion rider. Due to the impact, the rider and Sellammal fell down on the road and sustained grievous injuries all over the body. Immediately she was admitted in Govt. Hospital, Erode and thereafter to SIMS Hospital, Erode for further treatment. But she succumbed to injuries and died on 15.01.2019 on account of accidental injuries.

(ii) At the time of accident, the deceased was aged 53 years and was doing vegetable vending business, out of which, she earned Rs.15,000/- to



Rs.20,000/- per month. A huge amount was spent towards her medical expenses in order to save the life of the deceased.

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(iii) The claimants are respectively the husband and two sons of the deceased. Claiming compensation for the death of the deceased Sellammal, the claimants have filed a claim petition in MCOP.No.44 of 2019 before the Special District Judge of Erode seeking compensation of Rs.25 lakhs. According to the claimants, the respondents 1, 2 and 3 are respectively the driver, owner and insurer of the offending vehicle. Since the accident had occurred due to the rash and negligent driving of the 1st respondent/driver of the offending vehicle. 2nd and 3rd respondents who are owner and insurer of the offending vehicle are jointly and severally liable to pay the compensation to the claimants.

3. Before the claims tribunal, on the side of the claimants, witness PW1 was examined and exhibits Ex.P.1 to Ex.P.22 were marked. On the side of the respondents, none was examined and no exhibits were marked. The tribunal, on appreciation of material and documentary evidence, fastened the composite negligence of 10% on the driver of the TVS moped in which the deceased travelled as a pillion rider and 90% on the driver of the offending vehicle and awarded a compensation of Rs.10,81,700/-. It



directed the 3rd respondent/Insurance Company to pay the compensation of Rs.9,73,530/- after deducting 10% of the award amount towards contributory negligence to the claimants at the rate of 9% per annum from the date of petition till the date of realisation. The tribunal also directed that out of compensation amount, the 1st claimant/husband is entitled to Rs.7,73,530/- and the 2nd and 3rd claimants/sons of the deceased are entitled to Rs.1,00,000/- each along with interest at the rate of 9% per annum. The compensation awarded by the tribunal under various conventional heads are as follows:

<i>S.NO.</i>	<i>Conventional Heads</i>	<i>Amount</i>
1.	Loss of Income	Rs. 8,71,200/-
2.	Funeral Expenses	Rs. 15,000/-
3.	Loss of belongings	Rs. 15,000/-
4.	Consortium	Rs. 40,000/-
5.	Parental Consortium	Rs. 80,000/-
6.	Pain and sufferings	Rs. 50,000/-
7.	Medical Expenses	Rs. 10,500/-
8.	Total Loss	Rs. 10,81,700/-
9.	10% Liability to be deducted on the 1 st petitioner	Rs. 1,08,170/-

4. Aggrieved against the quantum of compensation fixed by the tribunal on lower side, the claimants have filed the present Civil Miscellaneous Appeal.



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5. The learned counsel for the appellants submitted that the tribunal, having failed to appreciate the oral and documentary evidence, erroneously fixed the contributory negligence at 10% on the part of the rider of the vehicle, in which the deceased travelled as a pillion rider. The tribunal has erroneously fixed the notional income of the deceased only at Rs.9000/- per month, without considering the minimum wages payable in the year 2019 as per *Sarla Verma's* case. Further, it had also failed to award 10% towards future prospectus. It is his further submission that the tribunal has fastened 10% of contributory negligence on the part of the 1st appellant, but admittedly, neither the 1st respondent/driver of the offending vehicle nor the 1st appellant have marked their driving licence as exhibits before the tribunal. But the tribunal has fastened 10% of contributory negligence on the part of the 1st appellant which is not sustainable. Moreover, when the contents of the Ex.P.1-FIR reads as against the 1st respondent driver for the occurrence of the accident, it is for the 1st respondent/driver of the offending vehicle to mark his driving licence before the tribunal, but in the absence of such driving licence, the tribunal ought to have fix the entire liability on the 1st respondent and direct the Insurance company to recover the amount from the owner of the vehicle. Hence, fastening of liability



of 10% as against the 1st appellant and deceased by the tribunal is not sustainable one. In respect of quantum of compensation awarded, the accident was occurred in the year 2019 and as per *Sarla Verma's* case, the applicable notional income is Rs.15,000/-, but in the present case, the tribunal has taken the notional income of the deceased only at Rs.9000/- which is very meagre. Therefore, he prayed for enhancement of the compensation awarded by the tribunal and for allowing the appeal.

6. The learned counsel appearing for the 3rd respondent /Insurance company submitted that the trial court on the basis of oral and documentary evidence, has rightly fixed Rs.9000/- as notional income of the deceased. Further, the 1st respondent who drove the vehicle did not possess driving licence, but the tribunal has erroneously fixed the contributory negligence on the part of the 1st respondent at 90%, instead of fixing major liability on the part of the 1st appellant. Accordingly he prayed for dismissal of the appeal.

7. Heard the learned counsel for the appellants and the learned counsel appearing for the 3rd respondent/Insurance Company and perused the materials available on record.

8. In the instant case, admittedly the appeal was filed by the



claimants for enhancement of compensation. It is the admitted fact that the 1st appellant as well as the 1st respondent did not possess valid driving licence to drive the motor vehicle. The Tribunal, on considering the oral and documentary evidence in a proper perspective fixed the contributory negligence on the part of the 1st appellant at 10%, which need not be interfered with. In respect of quantum of compensation, admittedly the deceased is the wife of the 1st appellant and mother of the 2nd and 3rd appellants. Admittedly, no document was marked before the tribunal to prove the income contributed by the deceased to her family. However, by applying the dictum laid down by the Apex Court in *Sarla Verma's* case reported in **(2009)6 SCC 121**, this court is inclined to fix Rs.15,000/- as notional monthly income of the deceased.

9. If 1/3 of the monthly income is deducted towards the personal expenses of the deceased, her monthly contribution to the family would be Rs.10,000/-. As per *Pranay Sethi's* case, adding 10% to her salary towards future prospectus, the total income would be Rs.11,000/- (Rs.10,000 + 1,000). By applying appropriate multiplier of 11, the loss of income is computed as follows:

$$11,000 \times 12 \times 11 = 14,52,000/-.$$



The tribunal has granted Rs.15,000/- towards funeral expenses which appears to be meagre, hence this Court awards Rs.16,500/- under such head. Based on the medical bills produced, the tribunal has rightly awarded Rs.10,500/- towards medical expenses and the same is hereby confirmed. This Court awards Rs.44,000/- to each of the claimants under the head loss of love and affection. Apart from that, this Court awards Rs.16,500/- for loss of estate. The amounts awarded by the tribunal under the heads, loss of belongings, loss of consortium, parental consortium and pain and sufferings needs to be interfered with by this court. Hence, the compensation granted by the tribunal under the above heads are hereby deleted.

10. The compensation awarded by this court under various conventional heads are as follows:

<i>S.NO.</i>	<i>Conventional Heads</i>	<i>Amount</i>
1.	Loss of Income	Rs. 14,52,000/-
2.	Loss of Love and Affection (3 x 44000)	Rs. 1,32,000/-
3.	Medical Bills	Rs. 10,500/-
4.	Loss of Estate	Rs. 16,500/-
5.	Funeral Expenses	Rs. 16,500/-
	Total	Rs. 16, 27,500/-



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S.NO.	Conventional Heads	Amount
	10% deduction	Rs. 14,64,750/-

After deducting 10% towards contributory negligence, the total compensation amount would be Rs. 14,64,750/- [16,27,500 – 1,62,750].

The tribunal has awarded its compensation along with interest at the rate of 9% which seems to be excessive rate of interest, which requires to be interfered with. In view of the above, the appellants/claimants are entitled to the enhanced compensation of Rs.14,64,750/- along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

11. In the result,

- the Civil Miscellaneous is partly allowed. No costs.
- The claimants/appellants are entitled to enhanced compensation amount of Rs.14,64,750/- awarded by this Court along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.
- Accordingly, the 3rd respondent/Insurance company is directed to deposit the enhanced compensation amount awarded by this court along with interest at the rate of 7.5% per annum, from the date of petition till the date of



realisation.

- On such deposit, the claimants/appellants are permitted to withdraw the enhanced compensation amount awarded by this court, as per the apportionment made by the tribunal, less the amount, if any, already withdrawn, on making appropriate application before the trial court.
- The appellants are directed to pay the court fee, if any, for the enhanced compensation awarded by this court.

09.12.2024

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Index : yes/no

Internet: yes/no

To

The Special District Court, MCOP Tribunal, Erode,

M. DHANDAPANI, J.

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