



C.M.A.No.3094 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.3094 of 2023

1. Kasinathan

2. Malliga

3.K.Balamurugan

4.R.Alamelu

...

Appellants

..Vs..

1. Sundaramurthy

2. The Divisional Manager,
The New India Assurance Company Limited,
Hub Third Party Claims, CSI Building,
Second Floor No.1, Office Line,
Near Orris College, Vellore-01.

3. The Divisional Manager,
The New India Assurance Company Limited,
No.49, Periya Street, Tiruvannamalai-606 601.

(Since R1 and R3 remained exparte before the Tribunal,
their presence may be dispensed with) ...

Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.01.2023 made in M.A.C.T.O.P.No.770 of 2022, on the file of Motor



Accidents Claims Tribunal, Judge/Additional District Judge, Tiruvannamalai.

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For Appellants : Mr.M.Sunithi Abirami

For Respondents : R1 and R3 set exparte
Mr.K.Vinod (R2)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 31.01.2023 made in M.A.C.T.O.P.No.770 of 2022 on the file of the Motor Accident Claims Tribunal, Judge, Additional District Judge, Tiruvannamalai.

2. The appellants are the claimants in M.A.C.T.O.P.No.770 of 2022 on the file of *Motor Accidents Claims Tribunal, Additional District Judge, Tiruvannamalai*. They filed the above said claim petition, claiming a sum of **Rs.50,00,000/-** as compensation for the death of Chinnarasu, who died in an accident that took place on 26.10.2019.



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3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the Pulsar 180 F bearing Registration No.TN 11 AL 4284, belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of **Rs.13,00,680/-** (after deducting 10% contributory negligence) as compensation to the appellants.

4.Not being satisfied with the amount awarded by the Tribunal and also challenging the fixation of 10% contributory negligence on the part of the deceased, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel for the appellants contended that at the time of accident, the deceased Chinnarasu was aged 29 years and was running a tea shop and earning a sum of Rs.50,000/- per month, but the Tribunal has fixed only a sum of Rs.9,000/- as monthly income of the deceased, while determining the compensation towards Loss of Dependency, which is very low. He further submitted that the compensation awarded by the Tribunal under other heads is also very low and the same needs to be enhanced. It is



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his further contention that the Tribunal having found that the accident was occurred due to rash and negligent riding of the rider of the Pulsor 180 F, erred in fixing 10% contributory negligence on the part of the deceased for not wearing the helmet.

6.Per contra, learned counsel appearing for the 2nd respondent- Insurance Company contended that since the appellants have not filed any documentary evidence in order to prove that the deceased was earning a sum of Rs.50,000/- per month, the Tribunal by considering the nature of work done by the deceased, as tea shop owner has fixed a sum of Rs.9,000/- as monthly income of the deceased, which is reasonable. He further submitted that the total compensation awarded by the Tribunal under various heads is not meagre. The appellants have not made out any case for enhancement of compensation and that apart the Tribunal on considering the evidence of P.W.2 - an eye witness to the accident, has rightly fixed 10% contributory negligence on the part of the deceased. He therefore prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the



learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

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8. As far as fixation of 10% contributory negligence on the part of the deceased is concerned, though the Tribunal on considering the evidence of P.W.'s 1 and 2, has come to the conclusion that the accident occurred due to the rash and negligent driving of the rider of the Pulsor 180 F, has fixed 10% contributory negligence on the part of the deceased for not wearing helmet at the time of accident, which in the opinion of this Court is not correct. Merely not wearing of helmet by the deceased, who is a Pillion rider is not the cause for the accident. The accident occurred only due to rash and negligent driving of the rider of the Pulsor 180 F, which is supported by the evidence of P.W.1 and P.W.2. Therefore, this Court is inclined to set aside the 10% contributory negligence fixed on the part of the deceased. Accordingly, the same is set aside.

9. It is the case of the appellants that at the time of accident, the deceased was aged 29 years and was running a tea shop and earning a sum of Rs.50,000/- per month. Since no documents were filed with respect to proof



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of income, the Tribunal considering the nature of the work done by the deceased as tea shop owner has fixed notional income of the deceased only at Rs.9000/- which in the opinion of this Court is very low. The accident took place in the year 2019. The cost of living has been increased enormously and salary of even unskilled workers being increased substantially. Hence, a sum of Rs.15,000/- per month is fixed as notional income of the deceased and by adding future prospects @ 40% the monthly income of the deceased comes to Rs.21,000/-(15000+6000) and the annual income comes to Rs.2,52,000/- (21000x12). By deducting 50% towards personal expenses and by adopting multiplier '17' as per the decision of Hon'ble Supreme Court in the case of **SARLA VERMA AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER** reported in (2009) 4 MLJ 997, the compensation awarded by the Tribunal towards Loss of dependency is modified to **Rs.21,42,000/-** (252000-126000 x17)

10. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced, reduced or granted
1.	Loss of dependency	12,85,200/-	21,42,000/-	Enhanced
2.	Loss of Love and Affection	1,20,000/-	1,20,000/-	Confirmed
3.	Loss of Estate	15,000/-	15,000/-	Confirmed
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
5.	Transport	10,000/-	10,000/-	Confirmed
	Total	Rs.13,00,680/- (14,45,200-10% contributory negligence at Rs.1,44,520/-)	Rs.23,02,000/-	Enhanced by Rs.10,01,320 /-

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,00,680/- is hereby enhanced to Rs.23,02,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Out of the said compensation amount, the 1st and 2nd appellants/claimants are entitled to a sum of Rs.9,51,000/- each and each of the appellants/claimants 3 and 4 are entitled to a sum of Rs.2,00,000/-. The 2nd respondent-Insurance Company



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is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of **six weeks** from the date of receipt of a copy of this judgment to the credit of **M.C.O.P.No.770 of 2022** on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Tiruvannamalai. On such deposit being made, the Tribunal is directed to transfer the respective shares of the Claimants, directly to the Bank account of the Appellants/Claimants through RTGS, within a period of **three weeks**. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation. However, it is made clear that if there is any delay in filing the C.M.A. and in case of any earlier order by this Court, depriving interest for the period of delay in question, the interest portion for that period should be excluded for the purpose of granting interest. No costs.

22.01.2024

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Index : Yes / No

Internet : Yes / No



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To

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- 4.The Section Officer,
VR Section,
High Court,
Madras.



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KRISHNAN RAMASAMY, J.

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