



WEB COPY



CMA.No.1431 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.1431 of 2024

1. Jaithun Beevi
2. Kasim @ Mohammed Kasim
3. Dhameen Ansari

... Appellants

VS.

1. Natarajan
2. United India Insurance Co. Ltd.,
New No.1134, Old No.40-45,
Silingi Building,
Greams Road,
Chennai - 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 06.08.2022 in M.C.O.P.2023/2017 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellants : Mr.R.Navaneetha Krishnan

For R2 : Mr.P.Sankara Narayanan

J U D G M E N T



CMA.No.1431 of 2024

The appellants are the claimants in M.C.O.P.2023/2017 on the file of the Motor Accident Claims Tribunal, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of M.A.C.T. Rules, seeking compensation of Rs.36,00,000/- for the death of one Abdullah (husband of the 1st claimant and father of the claimants 2 and 3) in a road accident which happened on 04.01.2017.

2. The brief case of the appellants / claimants is as follows :

On 04.01.2017, Abdullah (deceased) was travelling as a pillion rider in a two-wheeler bearing Registration number TN-19-J-9492 on E.C.R.Road. When he was nearing Muhaiyur bus stop, Kancheepuram district, an Auto bearing Registration number TN-32-Q-5356 driven by its driver rashly and negligently, hit the two wheeler, as a result of which, Abdullah sustained injuries all over his body. He was immediately rushed to CMC Government Hospital, from where he was referred to Madras Government Medical College Hospital. However, he succumbed to injuries on 25.02.2017.

3. According to the claimants, the rash and negligent driving of the driver of the Auto bearing Registration number TN-32-Q-5356 was the



CMA.No.1431 of 2024

cause of the accident and that since the said vehicle was insured with the second respondent, the United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to him.

4. In the Tribunal, the owner of the vehicle remained absent and was set *exparte*. The second respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the driver of the auto bearing Registration number TN-32-Q-5356 and on the deceased Abdullah, in the ratio 80:20. Since the driver of the Auto did not have a valid driving licence on the date of accident, the Tribunal directed the second respondent, the United India Insurance company Limited to pay compensation of Rs.10,71,200/- (80% of the total award) together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, in the first instance and then recover the same from the



CMA.No.1431 of 2024

owner of the vehicle, vide, its orders dated 06.08.2022.

WEB COPY

6. Aggrieved over the quantum of compensation awarded by the Tribunal and challenging 20% contributory negligence fastened on the part of the deceased, the appellants / claimants have filed the present appeal under Section 173 of the Motor Vehicles Act.

7. Heard Mr.R.Navaneetha Krishnan, learned counsel for the appellants and Mr.P.Sankara Narayanan, learned counsel for the second respondent.

8. Mr.R.Navaneetha Krishnan, learned counsel appearing for the appellants contended that Abdulla (deceased) was travelling only as a pillion rider in the two wheeler bearing Registration number TN-19-J-9492. However, the Tribunal fastened 20% contributory negligence on the part of the deceased since the driver of the two wheeler did not have a valid driving licence on the date of accident. He further contended that the compensation awarded by the Tribunal is also inadequate. He therefore, prayed for enhancement of compensation awarded by the Tribunal.



9. Per contra, Mr.P.Sankara Narayanan, learned counsel appearing for the second respondent, contended that the Award passed by the Tribunal is based on well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage. He also contended that the Tribunal after properly analysing the evidence on record, had rightly fastened contributory negligence to the extent of 20% on the part of the deceased.

10. It is seen from the records that the Tribunal had fastened negligence on the part of the driver of the Auto bearing Registration number TN-32-Q-5356. The rider of the two wheeler did not have a valid driving licence and therefore 20% of the negligence was fastened on the part of the deceased. It is pertinent to point out that when the entire negligence was on the part of the driver of the Auto, the Tribunal had wrongly fastened 20% of the contributory negligence on the part of the pillion rider, who had not in anyway contributed to the accident. Therefore, the same is liable to be set aside.

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



contended that Abdullah (deceased) was engaged in the business of buying and selling Mats, earning a sum of Rs.15,000/- p.m. However, the Tribunal fixed the notional monthly income of the deceased as Rs.10,000/- . It is pertinent to point out that the accident took place in the year 2017 and in the facts and circumstances, this court is of the opinion that fixing notional monthly income of the deceased at Rs.15,000/- would meet the ends of justice. As per the decision of the Supreme Court of India in *National Insurance Co. vs Pranay sethi and others* reported in **2017 (2) TNMAC 601**, 10% is added towards future prospects of the deceased. Since there are three dependents, 1/3rd of the deceased's income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 13 as per the decision rendered in *Sarla Verma and others vs. Delhi Transport Corporation and another* reported in **(2009) 6 SCC 121**.

Calculation :

Notional Income = Rs.15,000/-

after adding 10% Future Prospects = Rs.16,500/-

After 1/3 deduction = Rs.11,000/-

Loss of dependency :



CMA.No.1431 of 2024

= Rs.11,000/- x 12 x 13

= Rs.17,16,000/-

WEB COPY

In addition to that the claimants are entitled to Rs.1,20,000/- (40,000/-x3), Rs.15,000/-, Rs.15,000/- and Rs.5,000/- towards Loss of Consortium, Loss of Estate, Funeral Expenses and Transportation respectively as per the decision in *National Insurance Co. vs Pranay sethi and others* (cited supra). Thus, the claimants are entitled to a total compensation of Rs.18,71,000 (17,16,000 + 1,20,000 + 15,000 + 15,000 + 5,000 = 18,71,000) as shown in the following tabular column:

S.No.	Head	Amount granted by this court
1.	Loss of dependency	Rs.17,16,000/-
2.	Loss of consortium (Rs.40,000/- x 3)	Rs.1,20,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
5.	Transportation	Rs.5,000/-
Total		Rs.18,71,000/-

12. Thus, the compensation awarded by the Tribunal is enhanced to Rs.18,71,000/- which would carry interest at the rate of 7.5% per annum.

13. In the result,



CMA.No.1431 of 2024

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.10,71,200/- to Rs.18,71,000/-.
- iii. 20% of the contributory negligence fastened on the part of the deceased Abdullah is set aside.
- iv. The appellants / claimants are directed to pay court fee for the enhanced compensation amount, if any, within a period of four weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.
- v. The second respondent / United India Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.18,71,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation in the first instance, within a period of four weeks from the date of receipt of a copy of this order / uploading of this order to the credit of M.C.O.P.2023/2017 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai and then recover the same from the owner of the vehicle under the same cause of action.



CMA.No.1431 of 2024

WEB COPY

vi. On such deposit being made, the claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

vii. The appellants/claimants are not entitled to claim any interest for the period of delay of 292 days in filing this appeal.

02.09.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
vum

To

1. The Motor Accident Claims Tribunal
V Court of Small Causes, Chennai.

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

R.HEMALATHA, J.

vum



WEB COPY



CMA.No.1431 of 2024

C.M.A.No.1431 of 2024

02.09.2024