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Civil Miscellaneous Appeal No.1124 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1124 of 2024

Surfunisha
W/o.Subhan

... Appellant

Vs.

1.M/s.Mayor Sri Ramanathan Chettiar Centre,
"Subiksha" No.70, MRC Nagar Main Road,
R.A.Puram, Chennai - 600 028.

2.United India Insurance Co. Ltd.,
Motor Third Party Hubb,
4th Floor, Silinghi Buildings,
134, Greams Road, Thousand Lights,
Chennai - 600 006.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.11.2022 made in MACT.O.P.No.4622 of 2016 on the file of IV Small Causes Court, Motor Accident Claims Tribunal, Chennai.

For Appellant : Mr.M.Mahendran
for Mr.N.M.Muthurajan

For Respondents : Mr.J.Michael Visuvasam [R2]



JUDGMENT

WEB COPY The claimant, not being satisfied with the quantum of compensation fixed by the Tribunal and also attributing 50% contributory negligence on the deceased, has filed the present appeal against the award passed by IV Small Causes Court, Motor Accident Claims Tribunal, Chennai, in MACT.O.P.No.4622 of 2016, dated 11.11.2022.

2. The claimant is the mother of the deceased Mohammed Aagil. The case of the claimant is that her son was riding a two wheeler on 20.10.2015 from Pudupet to Thorapakkam along with DGS Dinakaran Salai and at about 20.20 hours when he was proceeding near the junction of MRC Nagar, the offending vehicle belonging to the first respondent was driven in a rash and negligent manner and took a left turn and hit the two wheeler driven by the deceased and as a result of which, the deceased was thrown out of the vehicle and he died on the spot. It is under these circumstances, the mother of the deceased filed the claim petition seeking for payment of compensation.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of evidence, came to a conclusion that there was negligence on the part of the deceased as well as the offending vehicle



and therefore, fixed 50% negligence on the part of the offending vehicle and 50% contributory negligence on the part of the deceased. Having rendered such a finding, the Tribunal fixed the total compensation at Rs.6,87,300/- under various heads in the following manner:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of dependency	6,04,800/-
2.	Loss of consortium	44,000/-
3.	Loss of estate	16,500/-
4.	Funeral expenses	16,500/-
5.	Transportation expenses	5,500/-
	Total	6,87,300/-

The above compensation was directed to be paid along with interest at 7.5% p.a.

4. The claimant, not being satisfied with the compensation awarded by the Tribunal, has filed the present appeal before this Court.

5. Heard Mr.M.Mahendran, learned counsel for appellant/claimant and Mr.J.Michael Visuvasam, learned counsel for second respondent.

6. The eye witness in this case has been examined as PW-2. The



Tribunal, on appreciation of evidence, has come to the conclusion that PW-2 was present at the time of accident and that he might not have seen the accident since he was also driving a vehicle. After reaching such a finding, the Tribunal went into the manner in which the accident had taken place. The accident spot was a four road junction. The deceased was proceeding in a two wheeler in the MRC Nagar main road and the offending vehicle was entering into the main road and was turning left and at that point of time, it dashed the two wheeler that was ridden by the deceased. The Tribunal found that the deceased ought to have been more careful in watching the left side from where the offending vehicle was turning in the four road junction and to that extent, there was negligence on the part of the deceased also.

7. The question is as to whether the Tribunal must have fixed 50% towards contributory negligence against the deceased. The fact remains that the offending vehicle was turning left into the main road and the offending vehicle was expected to come at a lesser speed by giving preference to the vehicles which were already moving in the main road. Therefore, if the offending vehicle has been driven in a rash and negligent



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manner by coming at a speed and turning into the main road, a larger negligence must be attributed to the offending vehicle. Just because the deceased was not careful enough to watch the offending vehicle turning from the left, that does not mean 50% contributory negligence can be attributed against the deceased. The fact remains that there is some part of negligence on the part of the deceased and the same can be safely fixed at 20% and 80% negligence has to be fixed on the offending vehicle. To that extent, the finding of the Tribunal stands modified.

8. Insofar as the monthly income is concerned, the Tribunal had fixed the notional monthly income at Rs.8,000/-. It is the case of the claimant that the deceased was working as a packing machine operator and was earning a monthly income of Rs.15,000/-. The salary certificate was also marked as Ex.P6. There was no other material to corroborate this claim and the Tribunal was not inclined to rely upon the salary certificate. Therefore, the Tribunal fixed the monthly salary at Rs.8,000/-. Considering the age of the deceased and the year in which the accident had taken place, this Court is inclined to fix the notional monthly income at Rs.10,000/- and add 40% towards future prospects. If so, the loss of



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dependency would be:

Monthly Income	:	Rs. 10,000/-
Add: Future Prospects	:	Rs. 4,000/-
40% of Rs.10,000/-		-----
		Rs. 14,000/-
Annual Income	:	Rs. 1,68,000/-
(14,000 * 12)		
Less : Personal expenses		
Rs.1,68,000/- * 1/2	:	Rs. 84,000/-

		Rs. 84,000/-
Multiplier	:	x 18

Loss of income/dependency	:	Rs.15,12,000/-

9. In the light of the above discussion, this Court modifies the compensation in the following manner:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Loss of dependency	6,04,800/-	15,12,000/-
2.	Loss of consortium	44,000/-	44,000/-
3.	Loss of estate	16,500/-	16,500/-
4.	Funeral expenses	16,500/-	16,500/-
5.	Transportation expenses	5,500/-	5,500/-
	Total	6,87,300/-	15,94,500/-
	Less: 20% Contributory negligence		3,18,900/-
	Compensation payable	6,87,300/-	12,75,600/-

10. The compensation awarded by the Tribunal at Rs.6,87,300/- is enhanced to Rs.12,75,600/-. The second respondent insurance company



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is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six (6) weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

06.06.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

The IV Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

N.ANAND VENKATESH, J.

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