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C.M.A.No.2386 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.2386 of 2022

1. G.Janaki
2. Ganesan

... Appellants/Petitioners

Vs.

1. G.Manikumar
2. Royal Sundaram General Insurance Company Ltd.,
Subramaniyam Building, II-nd Floor No.1,
Club House Road, Annasalai, Chennai 600 002.
3. Ramji

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the fair and decretal award passed by the learned III Additional District and Sessions Judge Cuddalore at Vridhachalam (Motor Accident Claims Tribunal) dated 22.06.2022 in M.C.O.P.No.190 of 2021.

For Appellants	: Mr.S.Udhayakumar
For R1 & R3	: No appearance
For R2	: Ms.Shuwakitha for Mr.K.Sharath Chandran



C.M.A.No.2386 of 2022

JUDGEMENT

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This Civil Miscellaneous Appeal has been filed by the appellants/claimants, challenging the contributory negligence, liability as well as the quantum of compensation awarded by the Motor Accidents Claims Tribunal, on the file of M.C.O.P.No.190 of 2021 dated 22.06.2022.

2. On 10.09.2021 at about 6.00 p.m., when the deceased was riding a two wheeler bearing Reg.No.TN-91 R 9696, he was hit by a car, bearing Reg.No.KA 01 Z 9684, which was driven by its driver in a rash and negligent manner. Due to the said accident, the deceased sustained multiple injuries all over his body. Hence, the appellants being the parents of the deceased made a claim petition before the Tribunal, claiming a compensation of Rs.50,00,000/-.

3. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.15,31,316/- towards compensation to the appellants and also fastened 25% contributory negligence on the part of the deceased. Being not satisfied with the said compensation amount, the appellants have filed the present appeal.



C.M.A.No.2386 of 2022

4. The learned counsel for the appellants submitted that, at the time of accident, the deceased was studying III year BCA course, and after completion of course, he would have earned not less than a sum of Rs.15,000/- per month. However, without taking into account the educational qualification of the deceased, the Tribunal had fixed the notional monthly income of the deceased at a sum of Rs.9,000/- per month, which is on the lower side, and the same needs to be enhanced by this Court. Further, he would submit that though the Tribunal, based on oral and documentary evidence, has arrived at a categorical finding that the driver of the car bearing Reg.No.KA 01 Z 9684 was the cause for the accident, however, fastened 25% liability on the part of the deceased, for the reason that the deceased was not wearing helmet and not having valid driving licence at the time of accident. Therefore, the learned counsel contended that the findings rendered by the Tribunal fixing 25% contributory negligence on the part of the deceased, is liable to be set-aside.

5. Per contra, the learned counsel appearing for the second respondent/Insurance Company would submit that the rider of the two wheeler/deceased was not wearing helmet and also not having valid driving licence at the time of accident, and hence, the Tribunal has rightly fixed 25% liability against the rider of the two wheeler/deceased, which requires no



C.M.A.No.2386 of 2022

interference. Further, he submitted that, the amount awarded by the Tribunal under all heads, are just and reasonable, which requires no interference.

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.

7. In the present case, the Tribunal has arrived at a categorical findings and after analysing evidence of PW1 and Pw2, who are the eyewitness to the accident and Ex.P1, the Tribunal has come to a conclusion that the cause for the accident is only due to the rash and negligence on the part of the driver of the car bearing Reg.No.KA 01 Z 9684. The Tribunal ought to have fastened the entire liability on the part of the driver of the car, which was insured with the second respondent/Insurance Company. However, the Tribunal had erroneously fixed the contributory negligence on the part of the deceased and fastened 25% of the liability, which cannot be sustained. Therefore, this Court is inclined to set-aside 25% contributory negligence fastened on the part of the deceased, and hence the same is set-aside.

8. As far as the quantum of compensation is concerned, considering the



C.M.A.No.2386 of 2022

educational qualification of the deceased and as per the decisions of the

Hon'ble Apex Court as well as this Court in a catena of judgements, this Court

feels it appropriate to fix the notional income of the deceased at a sum of Rs.15,000/- per month instead of Rs.9,000/- per month, fixed by the Tribunal.

Thus, by fixing the notional income of the deceased at Rs.15,000/- per month;

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/-. Since

the deceased was a bachelor at the time of the accident, 50% has to be deducted

towards his personal and living expenses, thereby, the loss of income to the

family is arrived at Rs.10,500/- per month and the deceased was aged about 21

years at the time of accident as evidenced from the records, adopting the

multiplier of 18 as fixed by the Apex Court, the loss of income to the family is

arrived at $\text{Rs.10,500/-} \times 12 \times 18 = \text{Rs.22,68,000/-}$, which is worked out as

follows:-

<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 (50%) (Rs.21,000/- x 1/2) (Per month)	10,500
Notional income (per annum) (Rs.10,500/- x 12)	1,26,000
Multiplier	18



WEB COPY



C.M.A.No.2386 of 2022

<i>Loss of Income</i>	<i>Amount in Rs.</i>
Total	22,68,000/-

9. Consequently, the sum of **Rs.13,60,800/-** awarded by the Tribunal under the head of 'Loss of Income' is hereby modified and enhanced to **Rs.22,68,000/-**. Further, this Court finds that the Tribunal has awarded a sum of **Rs.40,000/-** under the head of “loss of consortium”, which appears to be low, and the same is enhanced and modified to a sum of **Rs.80,000/-**.

10. The Tribunal has failed to award any amount under the head of “loss of estate”, hence, this Court is inclined to award a sum of **Rs.16,500/-** towards “loss of estate”. A sum of **Rs.15,000/-** awarded by the Tribunal under the head of “loss of funeral expenses”, is enhanced to a sum of **Rs.16,500/-**.

11. Insofar as the compensation awarded by the Tribunal under other head viz., “Medical expenses” is concerned, this Court finds the same is just and proper and the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as under :-



C.M.A.No.2386 of 2022

WEB COPY

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of income	13,60,800/-	22,68,000/- (enhanced)
Medical expenses	1,05,516/-	1,05,516/-
Loss of consortium	40,000/-	80,000/- (enhanced)
Funeral expenses	15,000/-	16,500/- (enhanced)
Loss of estate	Nil	16,500/- (awarded)
Transportation charges	10,000/-	10,000/-
Total	15,31,316/-	
Less 25% contributory negligence committed by the deceased	3,59,860/-	Nil
Total	11,71,456/-	24,96,516/-
Rounded off		24,96,500/-

12. The appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.11,71,456/-** to **Rs.24,96,500/-**. The second respondent/Insurance Company is directed to deposit the said amount along with interest and cost, 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.190 of 2021 on the file of III Additional District and Session Judge, Cuddalore. Upon such deposit being made, the



C.M.A.No.2386 of 2022

Tribunal is directed to transfer the entire amount to the bank account of the appellants, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the appellants or application for withdrawal from the claimant, whichever is later. The appellants are entitled to equal share together with proportionate interest. The appellants/claimants are directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee has been produced by the claimant. No costs.

28.02.2024

Index : Yes / No
NCC : Yes / No
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To

1. The Motor Accident Claims Tribunal,
III Additional District and Session Judge,
Cuddalore.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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C.M.A.No.2386 of 2022

Krishnan Ramasamy,J.,
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C.M.A.No.2386 of 2022

28.02.2024