



CMA.No.3340 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.3340 of 2024

1. Sivakami
 2. G.Gowsickraj
 3. G.Santhosh
- ...Appellants

Vs.

1. P.Shanmugam
P.Parthiban (Died)
 2. United India Insurance Company Limited,
Having its Registered & Head office at
No.24, Whites Road, Chennai – 600 014.
 3. Logambal
 4. Minor P.Yasvanth
 5. Minor P.Srilega
 6. Geetha
- ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and decree dated 06.06.2023 made in MCOP.No.621 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.



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For Appellants : Mr.S.P.Yuaraj

For Respondents : Mr.J.Chandran, for R2

JUDGMENT

Challenging the judgment and decree dated 06.06.2023 made in MCOP.No.621 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode, the claimants have come up with this appeal.

2. Mr.J.Chandran, learned counsel takes notice on behalf of the 2nd respondent. In view of the consent expressed by the learned counsel on either side, this appeal is taken up for final disposal at the admission stage itself.

3. It is the case of the claimants that, on 11.08.2017 at about 08.45 pm., when the deceased Gopalakrishnan was walking on the Erode to Karur road near Solangapalayam bus stop, at that time, a motor cycle bearing Regn.No.TN-47-AF-8076 owned by one Parthiban, since deceased, insured with the 2nd respondent, driven by the 1st respondent in



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a rash and negligent manner came in the same direction and hit the deceased Gopalakrishnan, due to which, he sustained grievous injuries and succumbed to the same. Thereby, the appellants, who are the dependents of the deceased Gopalakrishnan filed a claim petition in MCOP.No.621 of 2017 claiming a compensation of Rs.20,00,000/-. Before the Tribunal, the claimants examined two witnesses viz. P.W.1 and P.W.2 and marked exhibits P.1 to P.23 and on the side of respondents, no witnesses were examined and no documents were marked. After trial, the Tribunal, on appreciation of oral and documentary evidence held that both the 1st respondent and the deceased were jointly liable for the accident and fixed a contributory negligence of 30% on the part of the deceased and awarded a meagre amount of Rs.9,32,527/- towards compensation for the death of the deceased Gopalakrishnan. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have come up with this appeal.

4. Learned counsel for the appellants submitted that at the time of accident, the deceased was walking cautiously on the extreme left side of the road and the above said accident occurred solely due to the rash and



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negligent driving on the part of the 1st respondent and thereby, the FIR, Ex.P1 came to be registered as against the 1st respondent. However, without considering any of the above said facts, the tribunal, merely based on the rough sketch Ex.P2 came to an assumption that, the deceased might have suddenly crossed the road, without any indication and thereby fixed a contributory negligence of 30% on the deceased, which is wholly unsustainable. Further, the accident is of the year 2017 and at the time of accident, the deceased was aged about 50 years and was working in a cycle stand, however, the tribunal had fixed the monthly income of the deceased as Rs.9,000/- which is very meagre and the same is contrary to the ratio laid down by the Hon'ble Apex court in catena of decisions and thereby, the same has to be increased to Rs.15,000/- and the compensation awarded under the other heads are also on the lower side and the same has to necessarily be enhanced.

5. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company submitted that, by considering all the relevant documents, particularly the rough sketch, Ex.P2 the Tribunal fixed 30% contributory negligence on the part of the deceased, which cannot be said



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to be erroneous and the quantum of compensation awarded by the tribunal is already on the higher side and the same does not require any enhancement. Accordingly, he prayed for dismissal of the appeal.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The factum and manner of the accident is not in dispute and therefore, this Court is not entering into the said aspect.

8. Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2017 and at the time of accident, the deceased was aged about 50 years and was working in a cycle stand, however, the Tribunal has fixed the notional monthly income at Rs.9,000/-, which is on the lower side. Applying the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TANMAC 459**, and also considering the age of the deceased as also the claimants, fixing a notional income of Rs.15,000/- and adding future prospects at 25%, as



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has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680***, the income per month is quantified at Rs.18,750/-. Deducting 1/3rd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.12,500/- per month and the deceased being aged about 50 years, as evidenced from the records, adopting the multiplier of 13 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the loss of income/dependency to the family is arrived at Rs.12,500/- * 12 * 13 = Rs.19,50,000/-.

9. Insofar as the compensation awarded under the other heads are concerned, this Court is of the view that the compensation awarded under other heads are just and reasonable and the same does not requires interference of this Court.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of dependency	11,70,000/-	19,50,000/-
Loss of consortium for 1 st appellant	40,000/-	40,000/-
Loss of parental consortium for 2 nd and 3 rd appellants	80,000/-	80,000/-
Medical expenses	12,181/-	12,181/-
Funeral Expenses	15,000/-	15,000/-
Loss of estate	15,000/-	15,000/-
Total	13,32,181/- After deducting 30% towards contributory negligence, the total compensation is fixed at Rs.9,32,527/-	21,12,181/-

11. Insofar as the negligence is concerned, though, the tribunal had fixed a contributory negligence of 30% on the part of the deceased on basis of the Rough Sketch, Ex.P.2, however, P.W.2, who is the eye witness has not spoken affirmative in the manner in which the victim was walking on the road. In the absence of any affirmative evidence through P.W.2, at best, the Rough sketch, Ex.P.2 could have only inferential value and it cannot have any conclusive value. Further, the respondents have miserably failed to examine any witness to show that the deceased had



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also contributed to the accident. Hence, in the absence of any other evidences connecting the Rough sketch, Ex.P.2 with the findings arrived at by the tribunal, the finding recorded by the tribunal is not based on any conclusive material but on mere inference on the basis of Ex.P.2, which cannot be a basis to decide the contributory negligence in respect of the deceased.

12. In such view of the matter, this Court finds that the contributory negligence of 30% fixed on the deceased is without any proper material and therefore, the same cannot be sustained. Hence, this Court fixes the entire negligence on the part of the 1st respondent/driver and thereby, the 2nd respondent/insurance company is liable to pay the entire compensation in favour of the appellants.

13. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.621 of 2017 is modified by enhancing the compensation amount from Rs.9,32,527/- to **Rs.21,12,181/-**. The 2nd respondent Insurance is directed to deposit the said amount to the credit of MCOP.No.621 of 2017 along



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with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. In the above compensation, the 1st appellant is entitled to a compensation of Rs.8,44,872.40/- and the 2nd and 3rd appellants are entitled to a sum of Rs.6,33,654.30/- each, with proportionate interest and costs. On such deposit being made, the Tribunal is directed to transfer the said amount to the appellants/claimants directly to their bank accounts through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. It is underscored that the appellants are not entitled to any interest for the default period, if any. There shall be no order as to costs in this appeal.

20.12.2024

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NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

M.DHANDAPANI, J.



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To:

1. The Motor Accident Claims Tribunal, Special District Court,
Erode.
2. The Section Officer,
V.R. Section, High Court, Madras.

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