



CMA No.2576 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.2576 of 2023

- 1.Radha
- 2.Ranjith Kumar
- 3.Siva Ranjini (minor)
(rep on behalf of 1st petitioner mother)
- 4.Thulasiyammal (since deceased) .. Appellants

.Vs.

- 1.Mr.Teraiya Gaurangbhai
- 2.The Manager
National Insurance Company Ltd.,
D.O.T.P.Cell No.
Greems Road
Chennai 600 006. .. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 29.03.2023 made in MCOP No.694 of 2019, on the file of the Motor Accident Claims Tribunal / II Small Causes Court, Chennai.



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For Appellant : Mr.U.Chithambaram

For Respondents : Mr.S.Arunkumar [R2]

JUDGMENT

The claimants who are the wife and two children of the deceased not being satisfied with the quantum of compensation have filed the present appeal against the award passed by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, in MCOP.No.694 of 2019, dated 29.03.2023.

2.The case of the claimants is that the deceased Palani was riding a two wheeler on 16.01.2019 from Pondicherry to Chennai at ECR Road and at about 17.30 hrs when the vehicle was near the Vilambur palaiyar madam, the offending vehicle which was a Bus, was driven in a rash and negligent manner and it dashed on the two wheeler. The deceased fell down and sustained multiple injuries. He was rushed to Jipmer Hospital, Pondicherry. Unfortunately, the claimant succumbed to the injuries. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence found that there was certainly



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negligence on the part of the driver of the Bus. However, the Tribunal also found that the deceased was under the influence of alcohol and he has driven the vehicle without having a valid driving license and without wearing a helmet. Therefore, the Tribunal fixed 30% contributory negligence against the deceased. 70% liability alone was fastened against the respondents.

4.The Tribunal thereafter proceeded to fix the total compensation at Rs.18,45,000/- under various heads as follows:

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Dependency Rs.14,000/-*12*15 * 2/3	16,80,000/-
2.	Loss of Consortium	1,32,000/-
3.	Loss of estate	16,500/-
4.	Funeral Expenses	16,500/-
	Total	18,45,000/-
	Less: 30% contributory negligence	5,53,500/-
	Total	12,91,500/-

5.Out of the above compensation, a sum of Rs.12,91,500/- [70%] was directed to be paid with interest at the rate of 7.5% p.a.

6.The claimants questioning the quantum of compensation and also attributing



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30% contributory negligence against the deceased, have filed this appeal before this Court.

7. Heard Mr.U.Chithambaram, learned counsel for the appellants and Mr.S.Arunkumar, learned counsel for R2 – Insurance Company.

8. This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also carefully gone through the award passed by the Tribunal.

9. The first issue is with regard to the contributory negligence that was attributed against the deceased. This Court carefully went through Ex.R-1 which is the accident report which was also relied upon by the Tribunal. It has been clearly stated that the deceased was under the influence of alcohol. Further, the deceased was not wearing a helmet and the deceased was not even having a valid driving license. Therefore, the Tribunal fixed 30% contributory negligence attributed against the deceased. This Court does not find any ground to interfere with the same.

10. Insofar as the quantum of compensation is concerned, the Tribunal has fixed the notional monthly income of the deceased at Rs.10,000/-. The deceased was aged about 38 years and it is claimed that he was a Carpenter who was earning



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a sum of Rs.30,000/- per month. There was no evidence regarding the avocation of the deceased and the income earned by him. However, this Court finds that a sum

of Rs.10,000/- fixed by the Tribunal is on the lower side. Considering the fact that the accident had taken place in the year 2019 and also considering the fact that the wife and two children are the claimants, this Court is inclined to fix Rs.16,000/- as notional monthly income. 40% can be added towards future prospects. Thus, compensation under the head 'loss of income/dependency' is calculated as follows:

Monthly income fixed	:	Rs.16000/-
Future prospects to be added	:	40%
Notional monthly income arrived at	:	Rs.16,000/- + 40%
		Rs. 6,400/-

		Rs.22,400/-

Loss of income/dependency:	$Rs.22,400 * 12 * 15 * 2/3$
:	Rs.26,88,000/-

11.The compensation that has been granted under the other heads are reasonable and it does not require the interference of this Court.

12.In the light of the above discussion, the compensation granted by the



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Tribunal is modified as follows:

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Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Dependency $\text{Rs.}22,400 * 12 * 15 * 2/3$	26,88,000/-
2.	Loss of Consortium	1,32,000/-
3.	Loss of estate	16,500/-
4.	Funeral Expenses	16,500/-
	Total	28,53,000/-
	Less: 30% contributory negligence $28,53,000 * 30/100$	8,55,900/-
	Total	19,97,100/-

13.The compensation awarded by the Tribunal at Rs.12,91,500/- is enhanced to Rs.19,97,100/-. The 2nd respondent Insurance Company - is directed to deposit the enhanced compensation, less the amount already deposited, together with interest @ 7.5% p.a., from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. On such deposit, the appellants/claimants will be entitled to withdraw the entire compensation with interest. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants/claimants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.



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14.In the result, the Civil Miscellaneous Appeal is partly allowed in the above terms. No costs.

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Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP

To

Motor Accident Claims Tribunal
II Small Causes Court, Chennai.



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N. ANAND VENKATESH., J

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