



C.M.A.No.3339 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2024

CORAM:

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

C.M.A.No.3339 of 2024

and

CMP.No.28181 of 2024

1. R.Vinothini
2. A.Sanjanasri (Minor)
(Minor rep. by her mother and Natural Guardian
the 1st appellant R.Vinothini)

...Appellants

Vs.

1. P.R.Muralisankar
2. New India Assurance Company Ltd.,
Paramathi Velur Micro office,
No.36/2, 1st Floor, Union Bank of India Upstairs,
Old Bye Pass Road, Paramathivelur,
Tamilnadu – 638 182.
3. Vennila

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the impugned judgment and decree dated 30.10.2023 in MCOP.No.63 of 2020 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.



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For Appellants : Mr.R.Rajesh Kumar Maurya

For Respondents : Mr.K.Thirunavukkarasu, for R2
: Notice Dispensed with, for R1

JUDGEMENT

Challenging the judgment and decree dated 30.10.2023 made in MCOP.No.63 of 2020 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur, the claimants are before this Court.

2. Mr.K.Thirunavukkarasu, 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 appellants/claimants that, on 30.12.2019 at about 23 hours, when the deceased Aravinth was walking from West to East direction on the extreme left side of the Thiruchankodu to Namakkal road, at that time, a car bearing Regn.No.TN-28-AF-7445 owned by the 1st respondent



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insured with the 2nd respondent driven by its driver in a rash and negligent manner came in the opposite direction and dashed against him, due to which the deceased Aravinth sustained grievous injuries and succumbed to the same. Thereby, the appellants being the dependents of the deceased Aravinth, filed a claim petition seeking compensation of Rs.60,00,000/-. Before the tribunal, the claimants examined three witnesses viz. P.W.1 to P.W.3 and marked exhibits P.1 to P.15 and Exhibits X.1 & X.2 and on the side of respondents, X.W.1 and R.W.1 were marked and exhibits R.1 & R.2 were marked. After trial, the Tribunal, on appreciation of oral and documentary evidence, though came to a conclusion that the accident had taken place solely due to the rash and negligent driving on the part of the driver of the 1st respondent, however, fixed a contributory negligence of 20% on the part of the deceased Aravinth and awarded a meagre compensation of Rs.23,38,106/-. Challenging the same, the appellants/claimants have come up with this appeal.

4. Learned counsel appearing for the appellants submitted that admittedly, at the time of accident, the deceased was only aged about 26 years



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and was working as a Paratta Master and was earning a sum of Rs.25,000/- per month, however, the tribunal had fixed the monthly income of the deceased as Rs.14,562/- which is very meagre and the compensation awarded under the other heads are also on the lower side and the same has to necessarily be enhanced. Further, 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 negligent driving of the driver of the 1st respondent vehicle, due to which, a person lost his life, however, the tribunal, merely based on the rough sketch Ex.X.1 came to an assumption that, the deceased might have walked in a zig zag manner and thereby fixed a contributory negligence of 20% of the deceased which is wholly unsustainable. Accordingly, he prayed for appropriate orders.

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.X.1 the Tribunal fixed 20% contributory negligence on the part of the deceased, which cannot be said to be erroneous



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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. The major grievance of the appellants is that, though the accident is of the year 2019 and at the time of accident, the deceased was aged about only 26 years and was earning a sum of Rs.25,000/-, the tribunal had fixed the notional income as Rs.14,562/-, which is very meagre and contrary to the settled ratio in catena of decisions.

8. A perusal of the impugned award dated 30.10.2023 made in MCOP.No.63 of 2020, this Court is of the view that the compensation awarded by the tribunal is just and reasonable and thereby, the same does not require any further enhancement and thereby, the quantum of compensation fixed by



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the tribunal is confirmed.

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9. Insofar as the negligence is concerned, though, the tribunal had fixed a contributory negligence of 20% on the part of the deceased on basis of the Rough Sketch, Ex.X.1, marked through P.W.2, however, P.W.2 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.X.1 marked through P.W.2 could have only inferential value and it cannot have any conclusive value and in the absence of any other evidences connecting the Rough sketch, Ex.X.1 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.X.1, which cannot be a basis to decide the contributory negligence in respect of the deceased.

10. In such view of the matter, this Court finds that the contributory negligence of 20% 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's driver and thereby, the 2nd respondent/insurance company is liable to pay the entire compensation in



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favour of the appellants.

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11. After fixing the entire negligence on the part of the driver of the 1st respondent, the compensation payable to the appellants/claimants by the 2nd respondent is arrived at Rs.29,22,632/-.

12. Accordingly, the appeal is allowed in part and the impugned award of the Tribunal is modified by enhancing the compensation from **Rs.23,38,106/- to Rs.29,22,632/-**. The 2nd respondent/Insurance Company is directed to deposit the said amount to the credit of MCOP.No.63 of 2020 along 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 enhanced amount, the 1st appellant is entitled to a sum of Rs.6,50,000/- and the 2nd appellant is entitled to a sum of Rs.16,22,632/- and the 3rd respondent is entitled to a compensation of Rs.6,50,000/-, with proportionate interest and costs. On such deposit being made, the Tribunal is directed to transfer the compensation



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amount apportioned in respect of the 1st appellant and the 3rd respondent 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. Insofar as the apportionment of compensation in favour of the minor 2nd appellant is concerned, the Tribunal is directed to invest the same in an interest bearing fixed deposit initially for a period of three years to be renewed till she attains majority and the quarterly interest accrued thereon shall be paid to the 1st appellant/mother of the minor claimant for being used for the welfare of the minor 2nd appellant by the guardian. It is underscored that the appellants and the 3rd respondent are not entitled to any interest for the default period, if any. No costs. Consequently, the connected Miscellaneous petition is closed.

20.12.2024

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Index	: Yes / No
Speaking Order	: Yes / No
Neutral Citation Case	: Yes / No



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To

1. The Motor Accidents Claims Tribunal,
Principal District Judge, Perambalur.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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M.DHANDAPANI, J.

skt

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CMP.No.28181 of 2024

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C.M.A.No.3339 of 2024

CMA NO. 3339 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-01-2025

CORAM

THE HONOURABLE MR JUSTICE M.DHANDAPANI

CMA NO. 3339 of 2024

R.Vinothini

W/o. Late Aravinth, D/o. Ravi, Res. at No. 204,
Mariyamman, Kovil Street, Thoraimangalam,
Perambalur Taluk and District 621 220. and another

Appellant(s)

Vs

P.R.Muralisankar

S/o. Palanivel, No. 6/339, Thiruvalluvar Nagar,
A.S.Pettai, Namakkal, Namakkal District 637 001.
and 2 Others

Respondent(s)

For Appellant(s):

For Respondent(s):

M/s. K. Thirunavukkarasu For R2

In Sr Stage

ORDER

The matter is listed today under the caption 'for being mentioned'.

2.No further order is necessary.

07-01-2025



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To

1. P.R.Muralisankar

S/o. Palanivel, No. 6/339, Thiruvalluvar Nagar, A.S.Pettai,
Namakkal, Namakkal District 637 001.

2. New India Assurance Company Ltd

Paramathi Velur Micro Office, No. 36/2, 1st Floor, Union Bank of India
Upstairs, Old Bye Pass Road, Paramathivelur, Tamil Nadu 638 182.

3. Vennila

W/o. Late Ramasamy, No. 132, Vijayapuram Colony, sengattupatty, Thuraiyur
Taluk, Trichy District.

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