IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 19.07.2024	Delivered on 30.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Civil Miscellaneous Appeal Nos.2041, 2052, 2057 & 2063 of 2023

and Connected Miscellaneous Petitions

The Branch Manager,
The National Insurance Company Limited,
No.63, Rasi Plaza,
West Pradhakshinam Road,
Karur. ... Appellant in all the Appeals

Vs

1. Amutha
2. Muruganandam
3. Karthikeyan
4. Azhagar
5. Sivaraman ... Respondents in CMA 2041/2023

1. Rajamani
2. Periyaswamy
3. Sugamathy
4. Sivaraman ... Respondents in CMA 2052/2023

1. Muthazhagan
2. Karpagam
3. Punithavalli
4. Lavanya
5. Sivaraman ... Respondents in CMA 2057/2023

1. Ramachandran
2. Padma
3. Minor Pavithra
4. Minor Sarath Kumar
5. Sivaraman ... Respondents in CMA 2063/2023

Prayer: These Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in MACT OP No.10 of 2020, 272 of 2019, 270 of 2019 and 271 of 2019 respectively dated 30.08.2022, on the file of the Motor Vehicle Accidents Claims Tribunal, Additional District Court, Ariyalur.

For Appellant : Mrs.N.B.Sureka
(in all the Appeals)

For Respondents : Mr.S.Kamadevan,
for R1 to R4 in CMA Nos.2041, 2057 and 2063/2023
& R1 to R3 in CMA No.2052/2023

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

These Appeals are by the Insurance Company aggrieved by the award of the Tribunal made in MCOP Nos.270, 271, 272 of 2019 and 10 of 2020.

2.1. The original petitions were filed by the respective claimants claiming themselves to be dependents of the deceased persons who were bachelors. The original petitions were disposed of by the Tribunal by way of a common judgment since all the four persons died due to the same accident.

2.2. In MCOP No.270 of 2019 one Vignesh, who was a pillion rider in a TVS Super XL Motor Cycle died in the accident, the claimants who are the parents and two elder sisters of the deceased sought for compensation. According to them, while the said Vignesh was travelling as a pillion rider in the TVS Super XL Motor Cycle, which was ridden by one Heram on the left side of the Trichy to Chidabaram main road at around 9.15 p.m. on 06.06.2019. A Motor Cycle bearing registration No.TN-30-AM-4879 came in the opposite direction and dashed against the TVS Super XL Motor Cycle. As a result of the impact, the deceased fell down on the northern side of the road. A tipper lorry bearing Registration No.TN-48-T-1249 came from behind and ran over the deceased. The deceased sustained grievous injuries and died on the spot. The deceased was aged about 19 years old and was pursuing first year Diploma in Electronic Communication Engineering at the Government Polytechnic College, Keezhapalur. He was working part time in a local work shop and earning about Rs.9,000/- per month. Terming negligence on the part of the driver of the lorry as the cause of the accident, the claimants sought for compensation. Support was drawn from the fact that an FIR in Crime No.145 of 2019 was registered against the driver of the lorry, the claimants contended that the appellant Insurance Company as the insurer of the lorry is liable to pay a compensation of Rs.40,00,000/-.

2.3. In MCOP No.271 of 2019, a compensation of Rs.50,00,000/- was sought for, for the death of one Sathishkumar, who was also a pillion rider in the TVS Super XL Motor Cycle. The deceased was aged about 19 years and had passed SSLC. He was working as a heavy excavator helper in mines and was earning about Rs.18,000/- per month. The parents, younger brother and sister of the deceased sought for the compensation. The nature of the accident was the same as in MCOP No.270 of 2019.

2.4. In MCOP No.272 of 2019, compensation was claimed for the death of one Heram, who was the rider of the TVS Super XL Motor Cycle. It was claimed that he was doing final year I.T.I. Course and also working in a local lathe workshop and earning Rs.10,000/- per month, the claimants who are the grandmother, paternal uncle and aunt of the deceased sought compensation contending that they were dependant on the deceased.

2.5. In MCOP No.10 of 2020, a compensation of Rs.40,00,000/- was sought for, for the death of one Ajith @ Ajithkumar, who was aged about 19 years at the time of the accident. He has completed I.I.T. Course in Electrical Engineering at F.A.C. Ramasamy Raja Industrial Institute at Govindapuram. It was also claimed that he was earning

Rs.15,000/- per month by doing part time work. The claimants viz. the parents and the elder brothers of the deceased sought for compensation.

3. All these claim petitions were resisted by the Insurance Company contending that the accident did not happen due to the negligence on the driver of the lorry. It was contended that the lorry was being driven at a very normal speed i.e. 20 km per hour. The deceased who were traveling in TVS Super XL Motor Cycle, which had no registration number had hid against another Two-Wheeler bearing Registration No.TN 30 AM 4879 and fell down on the rear side tyre of the lorry. The driver of the lorry had no occasion to stop the lorry as the accident took place within a fraction of a second and hence if at all there is any negligence it could be attributed only to the rider of the Motor Cycle bearing Registration No.TN 30 AM 4879. The insurer and the owner of the said Two-wheeler not being made parties to the Claim Petitions, the claim petitions are not maintainable. The FIR came to be filed at the instance of the pillion rider of the Motor Cycle bearing Registration No.TN 30 AM 4879. It was also contended that the Topo-sketch would prove that the accident occurred due to the negligence of the Motor Cycle rider.

4. At trial before the Tribunal, one of the petitioners in each of the claim petitions were examined as P.W.1 to P.W.4 and one Sathish who claims to be an eye witness to the accident was examined as P.W.5. The driver of the lorry was examined as R.W.1.

5. On a consideration of the evidence on record particularly the First Information Report and the evidence of P.W.5 Sathish as well as certain admissions made by R.W.1 in his evidence the tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the lorry. It however, apportioned the negligence at 30% on the rider of the TVS Super XL Motor Cycle and 70% on the driver of the lorry. Since the lorry had a valid insurance cover and the M.V.I. Report also revealed that the accident did not occur due to any mechanical defect in the lorry, the Tribunal concluded that the appellant Insurance Company as the insurer and the first respondent the owner of the lorry are liable to pay the compensation jointly and severally.

5.1. On the quantum, the Tribunal took the notional income of the deceased at Rs.15,000/-, relying upon the judgment of this Court in ***Saraswathi and two others vs. Pacifica Chennai Project Infrastructure Co. Pvt. Ltd. and four others,*** reported in ***2022 (1) TNMAC 535***, the Tribunal adopted 40% towards future prospects and arrived at the monthly income of the deceased person at Rs.21,000/-. Deducted 1/3rd towards personal expenses of the deceased and adopted a multiplier of 18 after deducting 30% towards contributory negligence, the Tribunal arrived at the total loss of dependency at Rs.21,16,800/-. The Tribunal awarded a sum of Rs.20,000/- towards loss of estate, Rs.45,000/- towards loss of love and affection, Rs.10,000/- towards transport expenses, Rs.20,000/- towards funeral expenses. Thus the total compensation arrived at in MCOP No.270 of 2019 was fixed at Rs.22,11,800/-.

5.2. In MCOP No.271 of 2019, the Tribunal adopted the same figures in respect of the monthly income and future prospects, since the deceased in this case was also aged about 19 years, it applied the multiplier of 18 and after deducting 30% towards contributory negligence arrived at the total loss of dependency at Rs.21,16,800/-. It also awarded a sum of Rs.20,000/- towards loss of estate, Rs.45,000/- towards loss of love and affection, Rs.10,000/- towards transport expenses and Rs.20,000/- towards funeral expenses. Thus the Tribunal arrived at the total compensation at Rs.22,11,800/-

5.3. In MCOP No.272 of 2018, the Tribunal took the monthly income of the deceased at Rs.15,000/- it added 40% towards future prospects and arrived at the monthly income of Rs.21,000/-. It deducted 50% towards living expenses of the deceased and a further deduction of 30% towards contributory negligence and arrived at the total loss of dependency at Rs.15,87,600/-. On the conventional heads, the Tribunal awarded a sum of Rs.20,000/- each for loss of estate and funeral expenses, Rs.45,000/- towards loss of love and affection and Rs.10,000/- towards transportation. Thus the total compensation arrived at Rs.16,82,600/-.

5.4. In MCOP No.10 of 2020, the Tribunal fixed the monthly income at Rs.15,000/- adopted an increase of 40% towards future prospects deducted 1/3rd towards personal and living expenses and awarded a sum of Rs.21,16,800/- as loss of dependency after deducting 30% towards contributory negligence. It awarded a sum of Rs.20,000/-

each towards loss of estate and funeral expenses, Rs.45,000/- towards loss of love and affection and Rs.10,000/- towards transport expenses. Thus the total compensation arrived at was Rs.22,11,800/-. Aggrieved by the awards granted as above, the Insurance Company is on Appeal.

6. We have heard Mrs.N.B.Sureka, learned counsel appearing for the appellant in all the Appeals and Mr.S.Kamadevan, learned counsel appearing for the claimants in all the Appeals. The owner of the lorry though served is not appearing either in person or through counsel.

7. Mrs.N.B.Sureka, learned counsel appearing for the appellant Insurance Company in all the Appeals would vehemently contend that the contributory negligence that has been assigned at 30% is too low considering the nature of the accident. According to her, when four persons are shown to be traveling in a TVS Super XL Motor Cycle (50CC vehicle), that by itself would amount to negligence on the part of the riders of the Motorcycle.

7.1. Taking us through the manner in which the accident had occurred, the learned counsel would contend that the cause of the accident was the rider of the other Two-Wheeler viz. the other Motor Cycle bearing Registration No.TN 30 AM 4879 and not on the lorry driver. Drawing our attention to the evidence as well as the plan, the learned counsel would submit that the riders of the TVS Super XL Motor Cycle fell on the road due to the impact with the other Two-Wheeler i.e., Motor Cycle bearing Registration No.TN 30 AM 4879, the lorry driver had no opportunity to avoid the accident as they fell on the rear side of the lorry. Therefore, attributing 70% of the negligence to the lorry driver is not just and proper.

7.2. The learned counsel would also point out that all the deceased persons are bachelors and the dependents are parents and siblings in three cases. In MCOP No.272 of 2019, the claimants are the grandmother, paternal uncle and aunt of the deceased. These persons viz. the grandmother, paternal uncle and aunt of the deceased cannot be said to be dependents of the deceased. She would also fault the Tribunal for deducting only $1/3^{rd}$ in MCOP No.270, 272 of 2019 and MCOP No.10 of 2020. While acknowledging the fact that the Hon'ble Supreme Court has in ***Sarla Verma& Others v. Delhi Transport Corporation and Another,*** reported in ***(2009) 6 SCC 121,*** held that the percentage of deduction for personal expenses would vary according to number of the dependents, she would contend that in the cases on hand most of the siblings are elder sisters and elder brothers who cannot be said to be completely dependent on the deceased. Therefore, according to her, the Tribunal was not justified in deducting 1/3rd towards personal expenses of the deceased.

8. Contending contra, Mr.S.Kamadevan, learned counsel appearing for the claimants would submit that the evidence of R.W.1 particularly in cross-examination where he admits that there was a distance of only three feet between him and the TVS Super XL Motor Cycle would show that he was negligent if only he had maintained a distance of 10 metres, suggested as a safe distance, he could have very well averted the accident. The fact that there was only 3 feet gap between the TVS Super XL Motor Cycle and the lorry would by itself demonstrate that the lorry driver was not keeping a safe distance from the other vehicle which was plying in the same direction. Therefore, according to him, the Tribunal was justified in fixing the negligence at 70% on the lorry driver.

8.1. On the deductions, the learned counsel would point out that in

MCOP No.270 of 2019, the claimants are the parents and two elder sisters, who were unmarried and were dependent on the deceased. In MCOP 272 of 2019, the claimants are the grandmother, paternal uncle and aunt were dependent on the deceased. In the other two cases, viz. MCOP No.271 of 2019 and 10 of 2020, the claimants were the parents, the younger brother and the younger sister, and elder brothers respectively. He would therefore submit that considering the number of dependents, the Tribunal was right in fixing the personal expenses at $1/3^{rd}$ instead of the usual one half.

9. We have considered the rival submissions.

10. As regards the question of contributory negligence, we have the FIR that has been filed against the driver of the lorry, the said FIR has been lodged by the pillion rider of the other Two-Wheeler, it is squarely blames the driver of the lorry for the accident. The evidence of P.W.5 also is to the same effect. Though P.W.5 has been cross-examined at length nothing has been brought about to show that he was deposing only to aid the claimants to get compensation. The evidence of the lorry driver is also not convincing, in cross-examination he admits that he maintained only at a distance of 3 feet between his vehicle and the TVS Super XL Motor Cycle which was going ahead of it. Heavy vehicles are required to maintain a safe distance from other vehicles. It is because of the fact that the heavy vehicle cannot be stopped suddenly if something untoward happens.

11. The evidence of R.W.1 in his cross-examination is very clear that he was maintaining only a 3 feet distance from the TVS Super XL Motor Cycle. Therefore, he was unable to stop the lorry when he saw the riders of the TVS Super XL Motor Cycle falling down on the road. Though P.W.5, in his evidence, has said that the persons who were traveling in the TVS Super XL Motor Cycle dashed against the other Two-Wheeler and fell on the road, the lorry which came from behind ran over them.

12. From the entire evidence on record, we could gather that it was the lorry driver who had the last opportunity to avert the accident and he could not avert the accident because of the very short distance that he maintained while he followed the Two-Wheeler. Therefore, we are unable to fault the Tribunal for having come to the conclusion that the lorry driver's negligence was the major cause of the accident. Therefore, the apportionment at 70% on the lorry driver and 30% on the Two-wheeler riders is just and reasonable.

13. Adverting to the quantum of compensation, we find that the Tribunal has adopted a sum of Rs.15,000/- per month as notional income, the accident had occurred in the year 2019 and this Court in ***Saraswathi and two others vs. Pacifica Chennai Project Infrastructure Co. Pvt. Ltd. and four others,*** reported in ***2022 (1) TNMAC 535***, had concluded that the monthly wages could be taken at Rs.15,000/-. Therefore, the adoption of Rs.15,000/- as monthly income by the Tribunal for all the deceased persons cannot be faulted. The future prospects adopted is also as per the judgment of the Hon'ble Supreme Court in ***National Insurance Company Ltd., Vs. Pranay Sethi,*** reported in ***(2017) 2 TNMAC 609 (SC)***.

14. The Tribunal has deducted 1/3rd towards personal expenses of the deceased from the compensation determined on the head of loss of dependency alone. It has also deducted 30% towards contributory negligence from the compensation determined for loss of dependency alone. We are not able to sustain this conclusion of the Tribunal. While personal expenses could be deducted from the loss of dependency, deduction towards contributory negligence should, in our opinion, be made from the total compensation and not from the compensation awarded under the head of loss of dependency alone. We therefore find that there is a procedural error committed by the Tribunal in deducting 30% towards contributory negligence from the amount awarded under the head of loss of dependency.

15. As regards the deductions for personal expenses, we find that the Tribunal has adopted 1/3rd in MCOP Nos. 270, 271 of 2019 and 10 of 2020, while it has adopted 50% in MCOP No.272 of 2019 where the grandmother, paternal uncle and aunt are the claimants. The learned counsel appearing for the Insurance Company would vehemently contend that the siblings who are the claimants in other cases cannot be considered to be dependants on the deceased. She would also point out to the evidence of each of the claimants, who were examined as P.Ws.1 to 4, is silent as to the dependency of the siblings on the deceased. She would therefore, contend that the deduction at 1/3rd in these cases is uncalled for and it should be 50%. We have been taken through the evidence of all the claimants witnesses viz. P.W.1 to P.W.5.

16. We find that the nature of dependency on the deceased, as regards the siblings has not been spoken to. The Tribunal has just gone by the number of claimants and adopted a deduction of 1/3rd in three original petitions. We do not think we could sustain such deduction in the absence of any evidence to the claimants. Of course in ***Sarla Verma& Others v. Delhi Transport Corporation and Another,*** reported in ***(2009) 6 SCC 121***, the Hon'ble Supreme Court has pointed out that deductions will vary in accordance with the number of dependants, but in cases where the deceased were bachelors and the evidence is silent as to the nature of dependency of the siblings, a deduction of 50% is the normal rule.

17. In the three original petitions viz. MCOP Nos.270, 271 of 2019 and MCOP No.10 of 2020, apart from the parents, the siblings have also been made as parties. In MCOP No.270 of 2019, the claimants are the parents and two elder sisters. We find that they are aged 22 and 20 years respectively. They cannot be held to be dependant on their younger brother who was just 19 years old. Similarly in MCOP No.271 of 2019, the younger brother and the younger sister are the claimants, admittedly the deceased was only pursuing his education therefore the minor siblings cannot be held to be dependants on the deceased. In MCOP No.10 of 2020, the claimants 3 and 4 are the elder brothers of the deceased, they also cannot be said to be completely dependant on the deceased for their sustenance. Therefore, the deduction of 1/3rd towards personal and living expenses in these three cases cannot be sustained. It has to be the normal 50%.

18. In the light of the above conclusion of ours the compensation on the head of loss of dependency will have to be reworked. The loss of dependency in the four original petitions viz. MCOP Nos.270, 271, 272 of 2019 and 10 of 2020 will be as follows:

> Monthly income at Rs.15,000/-, if we add 40% towards future prospects it will be Rs,21,000/- and if we deduct 50% towards personal expenses the monthly loss of dependency would be Rs.10,500/-, if we apply the multiplier of 18, the total loss of dependency would be Rs.10,500 x 18 x 12 = Rs.22,68,000/-. We will have to add to this the damages under the conventional heads which are as follows:

A sum of Rs.20,000/- each towards loss of estate and funeral expenses, Rs.10,000/- towards transportation, the Tribunal has granted only Rs.45,000/- in all cases towards loss of love and affection, it should be Rs.45,000/- each at least to the parents of the deceased in the three MCOPs viz, MCOP Nos.270, 271 of 2019 and 10 of 2020. Therefore, the claimants would be entitled to Rs.90,000/- on the said head. The grant of Rs.45,000/- in MCOP No.272 of 2019 is confirmed since loss of love and affection can be granted only to the grandmother and not to the paternal uncle and aunt. Thus worked the compensation in the three original petitions viz. MCOP Nos.270, 271 of 2019 and 10 of 2020 would be:

S.No.	***Heads***	***Amount***
1.	*Loss of dependency*	*Rs.22,68,000/-*
2.	*Loss of Estate*	*Rs. 20,000/-*
3.	*Loss of love and affection*	*Rs. 90,000/-*
4.	*Transportation charges*	*Rs. 10,000/-*
5.	*Funeral Expenses*	*Rs. 20,000/-*
	TOTAL	*Rs.24,08,000/-*

out of this, we have to deduct 30% towards contributory negligence, therefore the compensation allowable would be Rs.16,85,000/-.

As far as in MCOP No.272 of 2019 is concerned the compensation would be,

S.No.	***Heads***	***Amount***
1.	*Loss of dependency*	*Rs.22,68,000/-*
2.	*Loss of Estate*	*Rs. 20,000/-*
3.	*Loss of love and affection to grandmother only*	*Rs. 45,000/-*
4.	*Transportation charges*	*Rs. 10,000/-*
5.	*Funeral Expenses*	*Rs. 20,000/-*
	TOTAL	*Rs.23,63,000/-*

In this 30% towards contributory negligence has to be deducted. Therefore, the compensation that the claimants in MCOP No.272 of 2019 would be entitled to Rs.16,54,100/-

19. In view of the above, the Appeals are **partly allowed**, the compensation payable in CMA Nos.2057 of 2023, 2041 of 2023 and 2063 of 2023 is fixed at Rs.16,85,000/-, the compensation payable in

CMA No.2052 of 2023 is fixed at Rs.16,54,100/- there will be an award for the aforesaid amounts in all the original petitions.

20. We find that the Insurance Company has deposited 50% of the award amount. It shall deposit the balance with in a period of 12 weeks from the date of receipt of the order copy. The Tribunal will pay out the compensation awarded to the parents of the deceased persons equally in MCOP Nos.270, 271 of 2019 and 10 of 2020. In MCOP No.272 of 2019, the grandmother of the deceased alone will be entitled to the entire compensation. The interest awarded by the Tribunal at 7.5% is confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)
30.07.2024

jv

Index: Yes
Internet: Yes
Speaking order
Neutral Citation: Yes

To

1. The Additional District Judge,

Motor Vehicle Accidents Claims Tribunal,
Ariyalur.

2.The Section Officer,
VR Section,
Madras High Court, Chennai.

R.SUBRAMANIAN, J.

and

R.SAKTHIVEL, J.

jv

Civil Miscellaneous Appeal Nos.2041, 2052, 2057 & 2063 of 2023 and Connected Miscellaneous Petitions

30.07.2024