

C.M.A.No.3434 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.3434 of 2024

1.Uma

2.Muniraj

3.Munirathina

... Appellants

Vs.

1.P.Raghaventhiran

2.The National Insurance Company Limited,
Represented by its Branch Manager,
Branch Office
88 F Bye Pass Road,
Dharmapuri 636 701

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, challenging the order dated 23.12.2021 made in MCOP.No.523 of 2019 on the file of the MCOP Tribunal, Additional District Court, Hosur.

For Appellant : Ms.L.Manisha

For Respondents : Mr.M.Krishnamoorthy for R2



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JUDGMENT

The present appeal has been filed by the claimants not being satisfied with the quantum of compensation awarded in MCOP.No.523 of 2019 by dated 23.12.2021 on the file of the MCOP Tribunal, Additional District Court, Hosur.

2. The claimants are the parents and the sister of the deceased. The case of the claimants is that when the deceased was travelling in a two wheeler as pillion rider along with one Munusamy, who was riding the two wheeler bearing Reg. No.TN 24 T 1708 on 29.11.2017, at that time, a van bearing Reg. No.TN 70 M 5465 belonging to the first respondent and insured with the second respondent, driven by its driver, in a rash and negligent manner, hit against the abovesaid two wheeler. Due to which, the rider of the two wheeler sustained injuries and the pillion rider died in the hospital. It is under these circumstances, the claim petition came to be filed by the claimants who are the dependants of the deceased 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, came to a conclusion that the accident had taken place solely because of the rash and

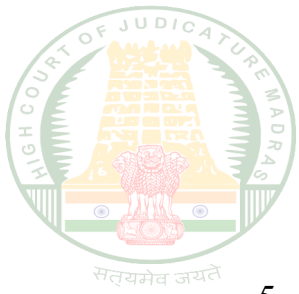


negligent driving on the part of the driver of the van belonging to the first respondent. Having rendered such a finding, the Tribunal attributed 15% contributory negligence on the deceased on the ground that at that time of the accident, he has not possessed valid driving license.

4. The Tribunal thereafter proceeded to fix the total compensation at Rs.11,68,410/- under various heads as follows :-

<i>Sl.No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of dependency	1. 12,09,600
2.	Consortium	80,000
3.	Fraternal Consortium	40,000
4.	Transportation	5,000
5.	Funeral expenses	15,0000
6.	Loss of Estate	15,000
7.	Medical Expenses	10,000
8.	Total	13,74,600
	15% contributory negligence	2,06,190
	Net compensation	11,68,410

The above compensation was directed to be paid with interest at the rate of 7.5% per annum.



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5. The claimants not being satisfied with the quantum of compensation fixed by the Tribunal and also attributing 15% contributory negligence on the deceased, have filed the present appeal before this Court.

6. The learned counsel for the appellants submitted that the Tribunal has erroneously attributed 15% contributory negligence to the deceased for not holding a driving license, despite the fact that the deceased was travelling as a pillion rider. The deceased was aged about 19 years at the time of the accident and was working as tiles fixing worker and was earning a sum of Rs.25,000/- per month. However, the Tribunal has fixed the notional income is Rs.8,000/- per month, which is too low. Therefore, this Court may interfere with the award by allowing this appeal.

7. The learned counsel for the second respondent submitted that the accident had happened due to the rider of the two wheeler and not due to the driver of the van. After investigation, it came to know that the driver of the two wheeler as well as the van does not have driving license. Hence, the insurance company is not liable to pay compensation to the appellants.



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8. Heard the learned counsel for appellants /claimants and the learned counsel for Insurance company. This Court has carefully considered the submissions made on either side and the materials available on record.

9. This Court also carefully went through the award passed by the Tribunal.

10. The deceased was a pillion rider. The first issue is that with regard to the 15% contributory negligence attributed against the deceased on the ground that he did not possessed driving license at the time of the accident. This Court has to ascertain whether the deceased has contributed for the accident. There is no necessity for the pillion rider to hold the driving license at the time of the accident. Without considering the said fact that the deceased was travelling as a pillion rider, the Tribunal has fixed the negligence as against the deceased, which is not sustainable. Therefore, this Court is inclined to set aside the contributory negligence on the part of the pillion rider/deceased. Hence, deduction of 15% towards contributory negligence on the part of the pillion rider does not arise at all.

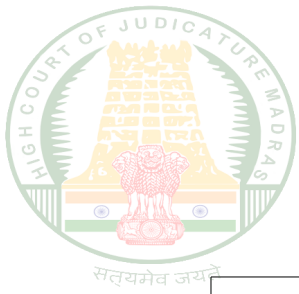


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11. Insofar as the quantum of compensation fixed by the Tribunal is concerned, in respect of loss of income needs to be interfered with. The Tribunal while fixing the compensation under the head of loss of income, has fixed the notional monthly income at Rs.8,000/- and the accident had taken place in the year 2017 and the deceased is aged about 19 years and he was working as a tiles fixing mason and therefore, this Court is inclined to fix the monthly notional income at Rs.14,000/- by considering his age and considering his Dependents. If 50% is added towards future prospects, the notional monthly income comes to Rs.19,600/-. Thus, the compensation under the head of loss of earnings is calculated as follows :-

$$\begin{aligned}\text{Loss of Income /Dependency} &= \text{Rs.14,000} \times \frac{1}{2} \\ &= 7,000/- \times 40\%(2,800) = \text{Rs.9,800/-} \\ &= 9800 \times 12 \times "18" \\ &= 21,16,800/-\end{aligned}$$

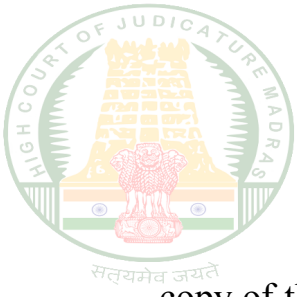
12. The other amount awarded by the Tribunal are just and proper, which cannot be interfered with and the finding of the Tribunal attributing 15% contributory negligence against the deceased is hereby set-aside. The compensation is modified as follows:



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of dependency	12,09,600	21,16,800
Loss of Consortium	80,000	80,000
Fraternal Consortium	40,000	40,000
Transportation	5,000	5,000
Funeral expenses	15,000	15,000
Loss of Estate	15,000	15,000
Medical Expenses	10,000	10,000
Total	13,74,600	22,81,800
15% contributory negligence	2,06,190	
Net compensation	11,68,410	22,81,800

14. In the light of the above discussion, there shall be a direction to the insurance company to pay the entire compensation amount of Rs.22,81,800/- as ordered by this Court with interest 7.5% per annum. Out of the entire compensation, the first appellant is entitled to get Rs.7,00,000/- along with interest and costs and the second and third appellants are entitled to get a sum of Rs.3,37,300/- each along with interest and costs. The compensation amount shall be deposited by the Insurance company, less amount has already been deposited, together with interest at 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 a



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copy of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants. The appellants are not entitled for any interest for the default period.

15. In the result, this Civil Miscellaneous appeal is partly allowed in the above terms. No costs.

21.12.2024

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To

MCOP Tribunal, Additional District Court, Hosur.



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M.DHANDAPANI.,J

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