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Civil Miscellaneous Appeal No.302 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.302 of 2023

1. V.Ponnusamy Gounder
2. P.Chinnamani

... Appellants

Vs.

1. S. Ganesan
(1st respondent was set *ex parte* in the trial Court)
2. National Insurance Company Limited,
Motor Third Party Claims - Hub,
Regina Mansion, 3rd Floor,
No.46, Moore Street, Chennai 600 001.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 17.12.2020 passed in M.C.O.P.No.2443 of 2017 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.I, Motor Accidents Claims Petition, II Small Cause Court (FAC)), Chennai.

For Appellants : M/s. P.T.Saleem Fathima

For Respondents : Mrs.R.Sreevidhya [R2]



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JUDGMENT

The claimants, who are the parents of the deceased Sivasakthi, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal (Special Sub Court No.I, Motor Accidents Claims Petition), II Small Cause Court (FAC)), Chennai, in M.C.O.P.No.2443 of 2017, dated 17.12.2020, have filed this appeal.

2. The case of the claimants is that the deceased Sivasakthi, who was aged about 24 years, was riding a two wheeler on 04.12.2016 in Manapparai - Karur road, along with the pillion rider and at about 18.30 hours, the offending vehicle, which was driven in a rash and negligent manner hit the motorcycle from behind, as a result of which the deceased was thrown out of the vehicle and he sustained grievous injuries. Unfortunately, he succumbed to the injuries. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking compensation.



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3. The Tribunal on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. Having rendered such a finding, the Tribunal attributed 10% contributory negligence against the deceased on the ground that three persons were travelling in the two wheeler.

4. The Tribunal thereafter proceeded to fix the total compensation at Rs.14,37,300/- under the following heads:

1. Total loss of dependency	-	Rs.15,12,000/-
2. Loss of Love and Affection	-	Rs.50,000/-
3.Loss of Estate	-	Rs.15,000/-
4.Transport charges	-	Rs.5,000/-
5.Funeral Expenses	-	Rs.15,000/-

Total Compensation fixed at	-	Rs.15,97,000/-

90% of the compensation	-	Rs.14,37,300/-

5. The above compensation was directed to be paid by the Insurance Company at 7.5% interest per annum.



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6. The claimants, not being satisfied with the quantum of compensation awarded by the Tribunal, and also 10% contributory negligence being attributed against the deceased, have filed the present appeal before this Court.

7. Heard the learned counsel for the appellant, the learned counsel for the 2nd respondent.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

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

10. The first issue raised is with regard to 10 % contributory negligence attributed against the deceased. The Tribunal on perusal of the oral and documentary evidence, came to a conclusion that the accident had occurred only due to the rash and negligent driving on the



part of the driver of the offending vehicle. The Motorcycle was driven by the deceased along with two pillion riders and it was also found that the deceased did not possess a valid driving license. The question is whether those factors by themselves will result in attributing 10% contributory negligence against the deceased. The manner in which the accident had taken place assumes lot of significance. The offending vehicle had dashed the two wheeler from behind and it was coming at high speed. That is the reason, the Tribunal found that the accident took place only due to rash and negligent driving on the part of the driver of the offending vehicle. It is well settled that if the rider of the vehicle does not possess a valid driving license, that by itself cannot attribute contributory negligence. Hence, the tribunal was not right in attributing 10% contributory negligence against the deceased and the said finding is liable to be interfered by this Court.

11. As far as the quantum of compensation is concerned, the bone of contention is with respect to fixation of the notional income of the deceased. The claimants came up with a case that the deceased at the time of the accident, was working as a Tiles Laying Mason and was



aged about 24 years and he was earning a monthly salary a sum of Rs.22,500/- to 30,000/-. There was no evidence before the Tribunal regarding the avocation of the deceased and also monthly income earned by him. Therefore, the Tribunal has fixed the notional income at Rs.10,000/- per month, which is on the lower side. This Court is inclined to increase the notional monthly income to Rs.12,500/-. If 40% is added towards future prospects, the total notional monthly income will work out to Rs.17,500/- (Rs.12,500/- + Rs.5,000/-). Thus, the compensation under the head 'loss of dependency' is calculated as follows:

Monthly Income	:	Rs. 12,500/-
Add: Future Prospects 40% of Rs.12,500/-	:	Rs. 5,000/- ----- Rs. 17,500/-
Annual Income (17,500 * 12)	:	Rs. 2,10,000/-
Less : Personal expenses Rs.2,10,000/- * 1/2	:	Rs. 1,05,000/- ----- Rs. 1,05,000/-
Multiplier	:	x 18 -----
Loss of income/dependency	:	Rs.18,90,000/- -----



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12. Considering the facts and circumstances of the case, compensation awarded towards loss of love and affection is enhanced to Rs.80,000/-.

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

14. In the light of the above discussion, this Court modifies the compensation in the following manner:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Loss of dependency	15,12,000/-	18,90,000/-
2.	Loss of Love and Affection	50,000/-	80,000/-
3.	Loss of Estate	15,000/-	15,000/-
4.	Transport charges	5,000/-	5,000/-
5.	Funeral expenses	15,000/-	15,000/-
	Total Compensation fixed at	15,97,000/-	20,05,000/-
	90% of the compensation	14,37,300/-	----

15. The compensation awarded by the Tribunal at Rs.14,37,300/- is



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enhanced to Rs.20,05,000/-. The second respondent insurance company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six (6) weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.5,67,700/- is concerned, the appellants/claimants will not be entitled for interest for the period of delay of 199 days as was ordered by this Court in C.M.P.No.22525 of 2022 in C.M.A.Sr.No.141768 of 2022 dated 01.02.2023. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is partly allowed.

No costs.

24.06.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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WEB COPY To

The Motor Accident Claims Tribunal
(Special Sub Court No.I, Motor Accidents Claims Petition,
II Small Cause Court (FAC)), Chennai.



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N.ANAND VENKATESH, J.

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