



C.M.A.No.2871 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 22.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.2871 of 2023

1.Sumathi

2.Suresh

.. Appellants

Vs.

1.M.Kumar

2.The Manager,
Reliance General Insurance Co. Ltd.,
Motor TP Claims,
No.6, Haddows Road,
Opposite Sasthiri Bhavan,
Nungambakkam, Chennai – 600 006.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to allow the appeal and to enhance the amount awarded in M.C.O.P.No.84 of 2022 on the file of the Motor Accident Claims Tribunal No.1, Special District Court, Thiruvallur (Special District Court to deal with M.C.O.P.Cases No.1, Thiruvallur) dated 13.07.2023.

For Appellants : Mr.U.Chithambaram

For R2 : Mr.P.Suresh Srinivasan



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JUDGMENT

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The claimants who are the parents of the deceased Surendar, not being satisfied with the quantum of compensation, have filed this appeal against the award passed by the Motor Accident Claims Tribunal No.1, Special District Court, Thiruvallur (Special District Court to deal with M.C.O.P.Cases No.1, Thiruvallur), in M.C.O.P.No.84 of 2022 dated 13.07.2023.

2.The case of the claimants is that the deceased Surendar was riding a two wheeler on 06.06.2022 along with his friend Dilip (P.W.2) as the pillion rider at Ponneri to Uthukottai main road and at about 01.00 P.M., the offending vehicle which was a Goods Carrier which was going in front of the two wheeler all of a sudden turned to the right side without any signal. As a result, the two wheeler dashed on the offending vehicle. The deceased sustained grievous injuries and he succumbed to the injuries. An FIR came to be registered in Crime No.191 of 2022 against the driver of the offending vehicle. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for compensation.



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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 both due to the negligence of the driver of the offending vehicle as well as that of the deceased. Accordingly, the Tribunal fixed 50% contributory negligence against the deceased.

4.The Tribunal having rendered the above finding, proceeded to fix the total compensation of Rs.13,30,600/- under various heads as follows:

Loss of dependency	8000 (add 40% future prospects) = 8000 + 3200 = 11,200 11,200 (50% deductions) =11,200 – 5600 = 5600 5600 X 12 X 18 (Multiplier) = 12,09,600	12,09,600
Loss of Estate	16,500	16,500
Loss of consortium	44,000 X 2	88,000
Funeral expenses	16,500	16,500
	Total	13,30,600
Less 50% for contributory negligence	13,30,600 (50%) = 6,65,300	6,65,300

5.Out of the above compensation, a sum of Rs.6,56,300/- (50%) was directed to be paid by the Insurance Company with interest at the



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rate of 7.5% per annum.

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6.The claimants not being satisfied with the quantum of compensation fixed by the Tribunal and also attributing 50% contributory negligence against the deceased have filed the present appeal before this Court.

7.Heard the learned counsel for the appellants and 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 is with regard to the contributory negligence that was attributed by the Tribunal against the deceased. P.W.2 who was the pillion rider was traveling in the vehicle ridden by the deceased. He has stated during examination that the offending vehicle was going in front of



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the two wheeler and all of a sudden, it turned right without showing any signal. The two wheeler had hit the offending vehicle as a result of which the accident took place. During cross examination, he has stated that there was a 10 meter gap between the offending vehicle and the two wheeler and there was less traffic at the time of the incident.

11.The FIR was registered against the driver of the offending vehicle in Crime No.191 of 2022. On completion of investigation, a final report was filed to the effect that the entire accident had taken place only due to the negligence on the part of the driver of the offending vehicle. The same is evident from Ex.P4, which was the final report that was marked before the Tribunal. The final report was filed for the offences under Sections 279 and 304(A) of IPC.

12.The other important document that should be relied upon is the report of the Motor Vehicle Inspector marked as Ex.P3. The damage that was sustained by the offending vehicle was noted as follows:

“1.Rear door right side half damaged & pressed rightward.



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*2.Rear door top steel channel front right side
1.5 feet width dented downward.”*

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13.It is quite evident from the evidence of P.W.2 read along with the FIR marked as Ex.P1, final report marked as Ex.P4 and the Motor Vehicle Inspector report marked as Ex.P3, that the offending vehicle had attempted to turn right without any signal and hence, the two wheeler which was following it was not able to be stopped and it had hit on the rear side door on the right side of the offending vehicle.

14.There was no effort on the side of the Insurance Company to examine any witness in this case and establish that there was sufficient contributory negligence on the side of the deceased. In view of the same, the finding of the Tribunal attributing 50% contributory negligence on the deceased is liable to be interfered by this Court.

15.There was a larger amount of negligence on the part of the driver of the offending vehicle. The deceased had driven the vehicle at a higher speed, which is evident from the damages sustained by the offending vehicle as per the report of the Motor Vehicle Inspector marked as Ex.P3. Therefore, this Court is inclined to fix 80% negligence on the



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driver of the offending vehicle and 20% contributory negligence on the part of the deceased.

16.The next issue is with regard to the compensation fixed under the head of loss of dependency. The Tribunal had fixed the age of the deceased at 18 years. The deceased was studying in a College at Ponneri and was doing IInd year B.Sc Chemistry. The Tribunal has fixed the notional income at Rs.8,000/- per month. The same is on the lower side. This Court is inclined to fix a sum of Rs.14,000/- per month as notional income. 40% can be added towards future prospects. Thus, the compensation under the head of loss of income / dependency is calculated as follows:

Monthly income fixed	:	Rs.14,000/-
Future prospects to be added	:	40%
Notional Income arrived at	:	Rs.14,000/- + 40% Rs.19,600/-
After deducting 1/2 for personal expenses	:	Rs.9,800/-
Multiplier to be adopted	:	18
Loss of Dependency Rs.9,800/- X 12 X 18	:	Rs.21,16,800/-



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17.The compensation that has been fixed under other heads are reasonable and it does not require the interference of this Court. In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:

1.Loss of Dependency	-	Rs.21,16,800/-
2.Loss of consortium	-	Rs.88,000/-
3.Loss of Estate	-	Rs.16,500/-
4.Funeral Expenses	-	Rs.16,500/-
Total		<u>Rs.22,37,800/-</u>
Less 20% contributory negligence	-	Rs.4,47,560/-
80% of the compensation	-	Rs.17,90,240/-

18.The compensation awarded by the Tribunal at Rs.6,65,300/- is hereby enhanced to Rs.17,90,240/-. The respondents are jointly and severally directed to deposit the enhanced compensation together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four (4) weeks from the date of receipt of a copy of this



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judgment, if not already deposited. 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.

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

22.07.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The Special District Judge,
Motor Accident Claims Tribunal No.1,
Special District Court
to deal with M.C.O.P.Cases No.1,
Thiruvallur

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

N.ANAND VENKATESH, J.

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