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C.M.A.No.4058 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.4058 of 2019

1.Abirami
2.Suresh
3.Saran
4.Naveen

... Appellants

Vs.

1.Mohammed Ajaz Shah
2.The Branch Manager,
SBI Insurance Company Limited,
Having office at Vellore.

... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.03.2017 made in M.C.O.P.No.648 of 2014 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellants : Mr.M.Sivakumar



C.M.A.No.4058 of 2019

WEB COPY

For Respondents : R1-Dispensed with
Mr.Harshit S.Jain
for M/s.Rank Associates for R2

J U D G M E N T

The appellants / claimants, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore, in M.C.O.P.No.648 of 2014, dated 15.03.2017, have filed this appeal.

2. On 11.04.2014 at about 04.00 p.m., when the deceased was proceeding from Vellore to BHEL in his two wheeler bearing Reg.No.PY 01 AC 1207, a car bearing Reg.No.MH 04 EX 1153 belonging to the first respondent was driven by its driver in a rash and negligent manner and hit behind the deceased's two wheeler, due to which, the deceased sustained fatal injuries all over the body and died on the spot. A case was registered in Crime No.115 of 2014 for the offence punishable under Sections 279, 337 and 304(A) IPC. Under these circumstances, the claim petition came to be



C.M.A.No.4058 of 2019

filed before the Tribunal by the claimants, who are the wife and children of the deceased, seeking for compensation.

3. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.4 were examined and Exs.P1 to P13 were marked. On the side of the respondents, no witness was examined and no documents were marked. 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 only due to the rash and negligent driving on the part of the driver of the first respondent and since the deceased has not worn the helmet at the time of accident, 25% of contributory negligence was fixed against the deceased. Having reached such a finding, the Tribunal proceeded to fix the total compensation at Rs.25,45,700/- under various heads. The above compensation was directed to be paid by the second respondent along with interest at 7.5% p.a.



C.M.A.No.4058 of 2019

WEB COPY

4. The claimants, not being satisfied with the quantum of compensation awarded by the Tribunal, have filed this appeal seeking compensation.

5. The learned counsel appearing for the appellants submitted that the Tribunal has erred in fixing 25% of contributory negligence on the deceased on the ground of non-wearing of helmet, instead of fixing the entire liability on the second respondent and no future prospect has been added, though the deceased was aged about 56 years at the time of accident and the appropriate multiplier has not been adopted, in terms of ***Sarla Verma and others v. Delhi Transport Corporation and another [2009 (2) TN MAC 1 (SC)]***. The compensation awarded under the other heads is also on the lower side. Hence, the learned counsel for the appellants prays for enhancement of compensation.



C.M.A.No.4058 of 2019

WEB COPY

6. Per contra, learned counsel appearing for the second respondent / Insurance company submitted that at the time of accident, the deceased has not worn the helmet and therefore, the Tribunal has rightly fixed 25% of contributory negligence against the deceased and the compensation awarded by the Tribunal is also on the higher side. Hence, he prays for dismissal of this appeal.

7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

8. The first issue is with regard to 25% of contributory negligence fixed by the Tribunal on the deceased.

9. The Tribunal, on appreciation of evidence, has rendered a categorical finding that the accident had taken place only due to the rash and negligent driving on the part of the driver of the car. Having rendered this



C.M.A.No.4058 of 2019

finding, the Tribunal attributed 25% contributory negligence against the deceased only on the ground that he was not wearing a helmet. The non-wearing of helmet has not actually contributed to the negligence resulting in the accident. Therefore, this Court is inclined to interfere with the said finding and reduce the contributory negligence from 25% to 10%.

10. The next issue pertains to the quantum of compensation fixed by the Tribunal.

11. In the instant case, the deceased was aged about 56 years and was working as a permanent employee in BHEL, Ranipet. As per Ex.X1, the Tribunal fixed the monthly income of the deceased at Rs.40,042/-, however, failed to add the future prospects. As per the judgment of the Hon'ble Supreme Court of India in the case of *Pranay Sethi and others vs. National Insurance Company Limited [(2017) 2 TNMAC 609 (SC)]*, 15% future prospects is to be added towards monthly income. The multiplier has not been adopted properly and the appropriate multiplier “9” for the age of the



C.M.A.No.4058 of 2019

WEB COPY

deceased (i.e.,) 56 years as per *Sarla Verma and others v. Delhi Transport Corporation and another* [2009 (2) TN MAC 1 (SC)] is to be adopted.

Hence, the loss of dependency would be:

Monthly Income	:	Rs. 40,042/-
Add: Future Prospects	:	Rs. 6,006/-
15% of Rs.40,042/-		-----
		Rs. 46,048/-
Annual Income	:	Rs. 5,52,576/-
(46,048 * 12)		
Less : Personal expenses		
Rs.5,52,576/- * 1/4	:	Rs. 1,38,144/-

		Rs. 4,14,432/-
Multiplier	:	x 9

Loss of income/dependency :		Rs.37,29,888/-

12. Insofar as the loss of consortium is concerned, the Tribunal has awarded a sum of Rs.1,00,000/- to the first appellant which is excessive and the same is reduced to Rs.40,000/-. The Tribunal has awarded only a sum of Rs.1,00,000/- towards love and affection to the appellants 2 to 4.



C.M.A.No.4058 of 2019

WEB COPY

Hence, this Court is inclined to award a sum of Rs.40,000/- to each of the appellants 2 to 4 towards love and affection. The compensation awarded under the head loss of estate is on the higher side and it is reduced to Rs.15,000/-. The compensation that has been awarded under the head 'transport expenses' is on the lower side and it is enhanced to Rs.15,000/-. Since the transport expenses includes funeral expenses, the funeral expenses awarded by the Tribunal is hereby cancelled. The compensation awarded under the head 'damages to cloths and articles' is just and reasonable and the same is hereby confirmed.

13. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads is modified as under:

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1	Loss of income	Rs.22,63,700/- (after deducting 25% contributory negligence)	Rs.37,29,888/-



C.M.A.No.4058 of 2019

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
2	Loss of consortium	Rs.1,00,000/-	Rs.40,000/-
3	Loss of Love and Affection	Rs.1,00,000/-	Rs.1,20,000/-
4	Loss of Estate	Rs.50,000/-	Rs.15,000/-
5	Medical Expenses	-	-
6.	Pain and Suffering	-	-
7.	Funeral Expenses	Rs.25,000/-	-
8.	Transport Expenses	Rs.5,000/-	Rs.15,000/-
9.	Damages to cloths and articles	Rs.2,000/-	Rs.2000/-
	Total	Rs.25,45,700/-	Rs.39,21,888/-
	Contributory negligence of 10%	-	Rs.3,92,188/-
	Compensation payable	Rs.25,45,700/-	Rs.35,29,700/-

14. In the result, this Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal at Rs.25,45,700/- is hereby enhanced to Rs.35,29,700/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The second respondent /Insurance Company is directed to deposit the entire award



C.M.A.No.4058 of 2019

WEB COPY

amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.648 of 2014 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore. On such deposit, the appellants are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal by making proper application before the Tribunal. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

26.11.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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C.M.A.No.4058 of 2019

WEB COPY

To

1.The Motor Accidents Claims Tribunal,
I Additional District and Sessions Court, Vellore.

2. The Section Officer,
V.R. Section,
High Court, Chennai.



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C.M.A.No.4058 of 2019

M.DHANDAPANI, J.

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C.M.A.No.4058 of 2019

26.11.2024