



C.M.A.(MD) No.815 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.815 of 2024

1.Ambigavathi,
2.S.Rajarathinam.

... Appellants

Vs.

1.D.Muruganantham,
2.The Manager,
Sriram General Insurance Co. Ltd.,
No.306, LIG, Nagasundaram Complex,
II Floor, Suguna Stores Building,
Anna Nagar, Madurai – 625 020.

3.The Divisional Manager,
New India Assurance Co. Ltd.,
CMTS Bhavan, BSNL Buildings,
Ellis Nagar, Madurai.

... Respondents

Prayer: Civil Miscellaneous Appeal filed Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 18.10.2024 passed in M.C.O.P.No.465 of 2013, on the file of the Motor Accidents Claims Tribunal/Special District Judge (MACT), Madurai.



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C.M.A.(MD) No.815 of 2024

For Appellant : Mr.S.Kumaravel

For Respondents

for R1 : Dispensed with

for R2 : Mr.V.Sakthivel

for R3 : Mr.N.Dilipkumar

J U D G M E N T

The instant appeal has been filed challenging the finding on negligence and seeking enhancement of compensation.

2. The appellants filed a claim petition stating that while the deceased was riding his motor cycle in track meant for two wheelers in the Natham main road, a lorry insured with the second respondent was parked on the road without any signal or indication during night hours and since the deceased was blinded by the headlights of the vehicle coming in the opposite direction, the deceased dashed against the lorry and sustained fatal injuries.

3. The third respondent herein/insurer of the deceased filed a counter stating that the deceased did not wear helmet and therefore, they are not liable to pay compensation.



C.M.A.(MD) No.815 of 2024

4. The second respondent herein/insurer of the lorry filed a counter stating that the insured vehicle was parked on the extreme left hand side of the road, as can be seen from the rough sketch prepared by the Police and therefore, the deceased was negligent and hence, they are not liable to pay compensation.

5. Before the Tribunal, the appellant examined P.W.1 to P.W.3 and marked Exs.P1 to P14. The respondents 2 and 3 examined R.W.1 to R.W.4 and marked Exs.R1 and R2. The final report and the rough sketch were marked as Exs.X1 and X2, respectively.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place both due to the negligence of the deceased and the driver of the insured lorry and apportioned contributory negligence at 40% on the deceased and 60% on the lorry driver and also fixed the total compensation of Rs.13,44,400/-, out of which, it directed the respondents 1 and 2 to pay Rs.8,06,640/- to the appellants.

7(a). The learned counsel for the appellants/claimants submitted



C.M.A.(MD) No.815 of 2024

that the Tribunal had apportioned 40% contributory negligence on the deceased, only on the ground that the deceased did not wear helmet and there is no evidence to suggest that the deceased did not wear helmet and hence, prayed for setting aside the finding on contributory negligence.

7(b). The learned counsel further submitted that the appellants/claimants had produced Ex.P10/salary slip of the deceased, which was marked through P.W.3-employer of the deceased, that would show that the deceased was earning Rs.12,675/- p.m.; and that the Tribunal had erroneously rejected the said certificate and hence, prayed for enhancement of the compensation.

8(a). The learned counsel for the second respondent/contesting respondent, per contra, submitted that the Tribunal ought to have fixed higher contributory negligence on the deceased, since the rough sketch would show that the lorry was parked in the extreme left hand side of the road and the FIR was lodged against the deceased.

8(b). The learned counsel also submitted that the quantum of compensation awarded by the Tribunal is just and reasonable and no



C.M.A.(MD) No.815 of 2024

interference is called for.

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9. Heard the learned counsel for the third respondent. Since the first respondent remained *ex parte* before the Tribunal, notice to the first respondent is dispensed with.

10. The points for consideration in the instant appeal are as follows:

'a. whether the finding on negligence by the Tribunal is justified?

b. whether the quantum of compensation awarded by the Tribunal is just and reasonable?'

11. The fact that the insured lorry was parked on the road is not in dispute. P.W.2-eye witness had deposed that the lorry did not have any indication to suggest that it was parked. R.W.1-Sub Inspector of Police, in his cross-examination, admitted that in the observation mahazar prepared by them, they had not stated that the lorry had any indicator or lights to suggest that it was parked on the road. However, the rough sketch-Ex.X2, which was filed before the Tribunal, would show that the major portion of the lorry was parked on the mud portion abutting the road. An FIR was



C.M.A.(MD) No.815 of 2024

also lodged against the deceased. Since the FIR was lodged against the deceased, no further investigation was carried out.

12. The evidence of witnesses on either side would suggest that both the deceased and the driver of the insured vehicle contributed to the accident that took place during night hours. However, this Court is of the view that there is no evidence to show that the deceased did not wear helmet at the time of accident. Though he had suffered head injuries, there cannot be any interference of the said fact in the absence of any evidence. Therefore, the finding of the Tribunal apportioning 40% contributory negligence on the deceased for not wearing helmet, cannot be sustained. This Court is of the view that the major portion of the lorry was parked in the extreme left hand side of the road on the mud portion, the deceased had also not exercised due care and caution while riding his two wheeler and hence, contributed to the accident. The contributory negligence on the deceased, thus, can be fixed at 30% instead of 40%. The point No.1 is answered accordingly.

13. As regards the quantum of compensation, it is seen that the claimants had produced Exs.P10 and P12 and had examined P.W.3-



C.M.A.(MD) No.815 of 2024

employer of the deceased to show that the deceased was earning a sum of Rs.12,675/- p.m. A perusal of Exs.P10 and P12 would show that the salary earned by the deceased at the time of his death was Rs.9,500/- p.m. and the remaining amount was pertaining to the allowances towards mobile phone and petrol. Hence, this Court is of the view that even if the evidence of P.W.3 and the documents Exs.P10 and P12 are accepted, Rs.9,500/- p.m. has to be reckoned as the income of the deceased. Since the deceased was aged 27 years at the time of accident, 40% has to be added to the future expenses. The multiplier applicable is '17'. Since he was a bachelor, 50% had to be deducted towards his personal expenses. Therefore, the compensation under the head 'loss of dependency' has to be $\text{Rs.9500/-} + \text{Rs.3,800/-} (40\%) \times 12 \times 17 \times 1/2 = \text{Rs.13,56,600/-}$.

14. The Tribunal has not awarded any compensation under the head 'loss of consortium'. The claimants are the parents of the deceased and hence, are entitled to Rs.40,000/- each towards the head 'loss of consortium'. Hence, Rs.80,000/- has to be awarded under the head 'loss of consortium'. The compensation under the other heads are reasonable and hence, confirmed. Thus, the total compensation awarded by the Tribunal is enhanced as follows:



C.M.A.(MD) No.815 of 2024

<i>Sl. No</i>	<i>Description</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
1	Loss of dependency	Rs.11,42,400/-	Rs.13,56,600/-	Enhanced
2	Medical expenses	Rs. 1,72,000/-	Rs. 1,72,000/-	Confirmed
3	Funeral expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
4	Loss of estate	Rs. 15,000/-	Rs. 15,000/-	Confirmed
5	Loss of consortium	---	Rs. 80,000/-	Granted
Total		Rs.13,44,400/-	Rs.16,38,600/-	
Contributory negligence		(40%) (-)Rs.5,37,760/-	(30%) (-)Rs.4,91,580/-	
Total		Rs.8,06,640/-	Rs.11,47,020/-	Enhanced by Rs.3,40,380/-

15. Though the Tribunal had held that the first and second respondents are jointly and severally liable to pay the compensation, since there is no violation of the policy conditions, the second respondent/Insurance Company is liable to pay **Rs.11,47,020/-** (Rupees Eleven Lakhs Forty Seven Thousand and Twenty only) (70% of Rs.16,38,600/-), together with interest at 7.5% p.a. from the date of the claim petition till the date of realization and proportionate costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.



C.M.A.(MD) No.815 of 2024

16. On such deposit, the appellants/claimants are permitted to withdraw their share amount with interest and costs, as per the apportionment fixed by the Tribunal, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal. The appellants/claimants are directed to pay the necessary Court Fee, if any, on the enhanced amount.

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

No costs.

14.10.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:

1. The Motor Accidents Claims Tribunal/Special District Judge (MACT),
Madurai.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD) No.815 of 2024

SUNDER MOHAN, J.

apd

C.M.A.(MD) No.815 of 2024

14.10.2024