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C.M.A.(MD)NO.1172 OF 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2024

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.M.A.(MD)No.1172 of 2021

1. R.Shankar

2. S.Shanthi

... Appellants / Petitioners

Vs.

1. Selvam

2. The Divisional Manager,
Bajaj Alliance General Insurance Company Ltd.,
Office at K.M.A.Complex,
12, G.Ram Nagar, Bye-pass Road,
Madurai.

... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to allow the appeal and enhance the compensation made in M.C.O.P.No.57 of 2019 dated 11.08.2021 on the file of the Motor Accident Claims Tribunal / IV Additional District Court, Madurai.

For Appellants : Mr.K.Ravi

For R-2 : Mr.Shylappa Kalyan

For R-1 : No appearance.

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ORDER

This civil miscellaneous appeal is preferred by the claimants. It is a case of fatal. The deceased was 17 years old at the time of accident. The claimants are challenging the fixation of wages as well as the contributory negligence. The Tribunal has fixed 40% as contributory negligence on the deceased. According to the claimants, the accident occurred, in spite of the fact that the deceased was riding the two-wheeler by keeping on the extreme left. The lorry was coming from the north-south direction from a mud road and it was attempting to take the main road, the lorry while driving from the mud road to the tar road was coming in a high speed and has committed the accident. However, the learned counsel appearing for the second respondent submitted that the two-wheeler was coming on a high speed and hit the back wheel of the lorry.

2. On perusing the evidence, the FIR has not clearly stated about the spot the two-wheeler had hit the lorry. It is the lorry driver who has stated that he was coming in a normal speed and that the two-wheeler hit behind the lorry and claimed he has not committed any offence.



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3. The next contention of the respondents is that the deceased was 17 years old and that he was a minor who was not having any license and also was not wearing helmet.

4. In the FIR, deposition as well as the sketch which is annexed along with the petition, it is seen that the deceased was travelling on the extreme left and it is a straight road running from west to east. The lorry had come from the mud road in order to take the main road. Therefore, the lorry ought to have run in a normal speed. The lorry failed to see that the two-wheeler was coming on the straight road. It is a person who is driving the vehicle wants to turn from any road ought to be careful. In the present case, the deceased was travelling in the straight road. But the lorry was travelling from the mud road and it was taking a turn to enter the main road. In that case, the lorry should have taken more care than the two-wheeler. Therefore, this Court is of the considered opinion that fixing contributory negligence on the deceased is on the higher side, hence this Court is reducing the contributory negligence on the deceased from 40% to **30%**.



5. As far as fixing income of the deceased, the Tribunal had fixed the income of the deceased person as Rs.5,000/-. Normally, fixing notional income for any person without any evidence is at Rs.8,000/-. Therefore, Rs.5,000/- as income of the deceased fixed by the Tribunal is on the lower side and hence this Court is fixing income at **Rs.10,000/-** for the deceased aged 17 years old and who was an agricultural coolie and the future prospects is 40%.

6. As far as loss of consortium the Tribunal had fixed Rs.44,000/-. In this case, two petitioners are there and hence a sum of Rs.44,000/- ought to be added. Therefore, another **Rs.44,000/-** is added and in total under loss of consortium Rs.88,000/- is added. The modified compensation awarded by this Court is as under:

i.	Monthly income of the deceased	Rs.10,000/-
ii.	Future prospectus(40%)	Rs. 4,000/-
iii.	Total monthly income	Rs.14,000/-
iv.	Deduct 50% for personal expenses	Rs. 7,000/-



S.No.	Head of Compensation	Modified award granted by this Court	Award granted by the Tribunal
1.	Loss of income (Rs.7,000 * 12* 18)	Rs.15,12,000/- (enhanced)	Rs.7,56,000/-
2.	Loss of estate	Rs.16,500/- (confirmed)	Rs.16,500/-
3.	Funeral expenses	Rs.16,500/- (confirmed)	Rs.16,500/-
4.	Loss of consortium to first petitioner	Rs.44,000/- (confirmed)	Rs.44,000/-
5.	Loss of consortium to the second petitioner	Rs.44,000/-	-
	Total	Rs.16,33,000/-	Rs.8,33,000/-
	(-) Contributory negligence	(- 30%) Rs.4,89,900/-	(-40%) Rs.3,33,200/-
	Total compensation	Rs.11,43,100/- (enhanced)	Rs.4,99,800/-

7.The 2nd respondent / Insurance Company is directed to deposit the sum of **Rs.11,43,100/-** with interest at the rate of 7.5% per annum, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw their equal shares with proportionate accrued interests and costs, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal.



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8. The award passed by the Tribunal is modified to the extent stated supra. This civil miscellaneous appeal is partly allowed on these terms. No costs.

30.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

1. The Motor Accident Claims Tribunal /
IV Additional District Court,
Madurai.
2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY,J.

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