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C.M.A.No.2400 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2025

C O R A M

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

C.M.A.No.2400 of 2021

1. K.Ganasoundari
 2. K.Tinith (Minor)
 3. T.Guna
- (2nd Petitioner is represented by his mother
and natural guardian Mrs.K.Ganasoundari)

... Petitioners/Appellants

-VS-

1. A.Tamilarusu
2. National Insurance Company Limited,
Motor Thiru Party Claims,
No.46, Regina Manson,
Moore Street, Chennai-600 001.
(R1 remained exparte before the Tribunal)

... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to enhance the award against the judgment and decree dated 18.10.2019 and made in M.A.C.T.O.P.No.5431 of 2016 on the



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file of the Motor Accident Claims Tribunal (Special Sub Court No.1, Motor Accident Claims Petitions) Small Causes Court, Chennai.

For Petitioner : Mr.A.G.F.Terry Chella Raja
For R1 : Exparte
For R2 : Mr.S.Arun Kumar

J U D G M E N T

(By J.Nisha Banu,J.)

Feeling aggrieved by the Award dated October 18, 2019 passed in M.A.C.T.O.P.No.5431 of 2016 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.1, Motor Accident Claims Petitions) Small Causes Court, Chennai (in short 'Tribunal'), the appellants / claimants preferred this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties herein are referred to as per their array in the Tribunal.

Brief facts put forth by the petitioners/claimants

3. The 1st claimant / 1st petitioner is the wife, the second claimant / 2nd petitioner is the son and the 3rd claimant is the mother of the deceased – T.Karunakaran. The case of the claimants is that on October 21,

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2015 at about 18.45 hours, while the deceased was riding his Hero Honda Motorcycle bearing Regn.No.TN-19-H-5393 from Thirukalukundram to Thiruporur, another Hero Motorcycle bearing Regn.No.TN-19-H-4626, which was driven by its rider in a rash and negligent manner from the opposite direction dashed against the deceased, which had resulted in sustaining fatal injuries and the deceased died on the spot. It is stated that the death of the deceased is attributable due to the rash and negligent driving of the rider, who is the 1st respondent herein and the vehicle was insured with the 2nd respondent / insurer. Stating that the respondents are vicariously liable to pay compensation to the claimants / petitioners, a claim Petition was filed before the Tribunal, seeking compensation of Rs.99,00,000/- (Rupees Ninety Nine Lakhs Only) from the respondents.

The case of the 2nd Respondent in the counter

4. At the first blush, it was stated that 1st respondent was not responsible for the accident, as it was the deceased, who had driven the two wheeler bearing Regn.No.TN-19-H-5393 in a rash and negligent manner and invited the accident. Thus, the deceased was solely responsible for the accident. The claimants have to prove the validity of the insurance policy and

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the driving licence of the deceased. The 2nd respondent denied the age, occupation and income of the deceased. Stating that the amount of compensation claimed is unsustainable, the 2nd respondent prayed to dismiss the claim petition.

5. Before the Tribunal, 1st petitioner was examined as P.W.1 and one Mr.R.Thamilazhagan, an ocular witness was examined as P.W.2 and Ex.P1 to Ex.P13 were marked on the side of the petitioners. On the side of the 2nd respondent, Ms.S.Chitra, Administrative Officer of the 2nd respondent was examined as R.W.1 and Ex.R1 to Ex.R4 were marked.

6. The Tribunal, after considering the evidence available on record, held that the 1st respondent is responsible for the accident. Accordingly, the Tribunal held that the 2nd respondent / Insurance Company, being insurer of the 1st respondent's motorcycle, is liable to pay the compensation to the petitioners/claimants.

7. With regard to quantum of compensation, though the

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claimants / petitioners stated that the deceased was working as a Carpenter, no documents had been filed to prove the income and hence, notional income had been taken into consideration. Hence, the Tribunal, upon considering the age of the deceased, had taken notionally a sum of Rs.10,000/- as his basic salary and added 40% towards future prospectus and deducted 1/3rd towards personal and living expenses of the deceased and computed the compensation as stated below:-

Sl.No.	Head	Amount
1.	Loss of dependency	Rs.19,04,000/-
2.	Loss of Consortium	Rs.40,000/-
3.	Loss of Love and Affection	Rs.75,000/-
4.	Loss of Estate	Rs.15,000/-
5.	Transportation Expenses	Rs.5,000/-
6.	Funeral Expenses	Rs.15,000/-
	Total	Rs.20,54,000/-
	After deducting 10% towards Contributory Negligence	Rs.18,48,600/-

8. Feeling aggrieved by the quantum of compensation awarded, the claimants / petitioners filed the Civil Miscellaneous appeal praying for enhancement of compensation amount.

9. Learned counsel for the appellants/claimants would submit that the deceased was a Carpenter and drawing a sum of Rs.20,000/- per

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month as income in the year 2015 and the said factor has not been properly taken into consideration by the Tribunal, instead a sum of Rs.10,000/- has been erroneously fixed as notional income of the deceased. Stating that the income fixed by the Tribunal is on the lower side, learned counsel for the appellants prays for enhancement of the compensation amount.

10. Per contra, learned counsel appearing for the 2nd respondent / Insurance Company would argue that though the claimants / petitioners averred that the deceased was working as a Carpenter, no concrete evidence was produced to substantiate the claim. In such a view, the Tribunal was right in fixing the notional income at Rs.10,000/-. There is no illegality or infirmity with the said findings of the Tribunal. Accordingly, the learned counsel prays to dismiss the Civil Miscellaneous appeal.

11. Heard the learned counsel on either side and perused the evidence and material available on record.

12. There is no dispute with regard to factum of the accident and involvement of two motorcycles bearing Regn.Nos.TN-19-H-5393 and TN-19-H-4626 and that the deceased was riding the former one. The core

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contention of the 2nd respondent is that the deceased was solely responsible for the accident, who drove the vehicle in a rash and negligent manner. On a perusal of the FIR (Ex.P1), the rider of the 1st respondent vehicle was alleged to be the main cause for the accident, which had been corroborated by P.W.2, stating that the rider of the 1st respondent vehicle bearing Regn.No.TN-19-H-4626 was rash and negligent. It is seen that the 1st respondent had not given any complaint about the accident and there was no contra evidence produced to disprove the accident. Thus, the Tribunal rightly arrived at a decision that the accident happened due to the rash and negligent driving of the 1st respondent. It is also to be noted that the 2nd respondent did not prefer any appeal against the findings of the Tribunal, hence, the findings of the Tribunal in respect of negligence attained finality. Since there was no valid licence possessed by the deceased, a contributory negligence was fixed on the deceased.

13. As regards quantum, though the claimants avered that the deceased was working as a Carpenter in 2015 and thereby earning Rs.20,000/- , no document was produced in proof thereof. Since the claimants did not

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produce any documents to show that deceased was earning Rs.20,000/- per month, this Court is of the view that the notional fixation of the amount by the Tribunal is very meagre, as deceased would have easily earned around not less than Rs.12,500/- per month. Considering the costs of living prevailing in the year 2015, and the fact that at the time of accident the deceased was 28 years old, applying 40% increase for future prospects and after deducting 1/3 as his personal expenses and applying multiplier of 17 as per the judgment of the Hon'ble Supreme Court in ***Sarla Verma and Others vs. Delhi Transport Corporation and another***, reported in ***2009 (6) SCC 121***, this Court arrives at a sum of Rs.23,80,000/- as compensation under the head 'loss of dependency'.

14. The Tribunal awarded Rs.40,000/- towards loss of consortium to the 1st petitioner and Rs.75,000/- towards love and affection to the 2nd and 3rd petitioners. In terms of the judgment of the Apex Court reported in ***2017(2)TNMAC 609 (SC) in (National Insurance Company v. Pranay Sethi)***, the petitioners / claimants are entitled to Rs.40,000/- each under the heads spouse consortium, filial consortium and parental consortium

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respectively. To that extent, the award of the Tribunal is modified. Taking note of the fact that the deceased did not possess a valid licence at the time of the accident, the Tribunal deduced 10% towards contributory negligence from the compensation. This Court finds that there is no infirmity or illegality in the deduction of 10% towards contributory negligence. The compensation awarded by the Tribunal under other heads is reasonable and the same is confirmed.

15. Accordingly, the claimants are entitled to get enhanced compensation of Rs.22,81,500/-(Rupees Twenty Two Lakhs Eighty One Thousand and Five Hundred only) after deducting Rs.2,53,500/- towards contributory negligence. The revised compensation is as detailed below:-

Sl.No.	Head	Amount
1.	Loss of dependency (Rs.12,500/-x12x17+40%-1/3)	Rs.23,80,000/-
2.	Loss of Spouse Consortium for P1	Rs.40,000/-
3.	Loss of Parental Consortium for P2	Rs.40,000/-
4.	Loss of Filial Consortium for P3	Rs.40,000/-
5.	Loss of Estate	Rs.15,000/-

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Sl.No.	Head	Amount
6.	Transportation Expenses	Rs.5,000/-
7.	Funeral Expenses	Rs.15,000/-
	Total	Rs.25,35,000/-
	Deduction towards 10% Contributory Negligence	Rs.2,53,500/-
	After deducting 10% towards Contributory Negligence	Rs.22,81,500/-

16. Therefore, the 2nd respondent / Insurance Company is directed to deposit the enhanced award amount of **Rs.22,81,500/-** (Rupees Twenty Two Lakhs Eighty One Thousand and Five Hundred only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of M.A.C.T.O.P.No.5431 of 2016 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.1, Motor Accident Claims Petitions) Small Causes Court, Chennai, less the amount if any already deposited, within a period of eight weeks from the date of receipt of copy of this judgment. On such deposit being made, the claimants are entitled to withdraw the same by filing proper application. The share apportioned by the Tribunal is unaltered. Further, the petitioners are entitled for proportionate costs and Advocate fees as per Rules. The appellants are

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directed to pay necessary Court fee for the enhanced compensation, if any.

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17. In the result, this Civil Miscellaneous Appeal filed by the appellants / claimants is allowed in part with proportionate costs as per modified Award passed in detailed above.

(J.N.B. J.,)

(R.S.V, J.,)

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Index: Yes / No

Internet: Yes / No

Speaking Order/ Non Speaking Order
ar/tk

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