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CMA.No.3343 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :04.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.3343 of 2021

1. Punitha.
2. Minor Harikishore
3. Minor Karpakam
- 4.Indhirani
5. Selvaraj
6. Jayammal

Minor Appellants represented by next friend
and mother Punitha, the 1st appellant.

... Appellants

Vs.

1. Sujatha
2. Bharati Axa General Insurance Company Limited
No.162, Metro Plaza 2nd floor, Opposite Spencer Plaza
Anna Salai, Mount road, Chennai-2

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to allow the present appeal award enhanced compensation in judgment and decree dated 14.10.2019 in MCOP No.597/2015 on the file of the Motor Accidents Claims Tribunal (Additional District Judge, FAC), Namakkal as prayed for in this CMA with cost.

For appellant : Ms.D.Jeevitha
for R.Nalliyappan



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For Respondents : M/s.B.Sivakollappan
R1- served-No appearance

JUDGMENT

Aggrieved by the quantum of compensation, the claimants have come before this Court by way of this appeal.

2. The wife, two minor children and parents of the deceased filed the original claim petition. Pending claim petition, the parents of the deceased, who are arrayed as claimants 4 and 5 passed away and hence, their legal representatives were brought on record as claimants 6 to 8,

3. According to the claimants, on 18.04.2015 at about 9.30 a.m, when the deceased attempted to cross the Sellappampatti to Bommaikuttaimedu National Highway-7, while riding his two-wheeler, the car owned by the first respondent came in the opposite direction in a rash and negligent manner and hit the two-wheeler of the deceased. As a result of which, the rider of the two-wheeler died. It is the further case of the claimants that the deceased was aged about 40 years and he was running a saloon shop and earning a sum of Rs.15,000/- per month.



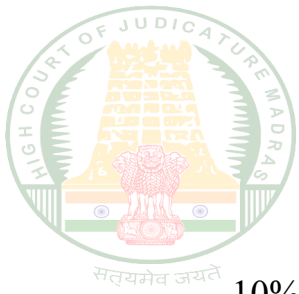
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4. The second respondent filed a counter-affidavit and resisted the claim on the ground of negligence and also other aspects. It is the specific case of the second respondent that the deceased was solely responsible for the accident and hence, there was no negligence on the part of the driver of the first respondent vehicle. Accordingly, the second respondent prayed for dismissal of the claim petition.

5. Before the Tribunal, the wife of the deceased/ claimant No.1 was examined as PW1 and one eyewitness was examined as P.W2. On behalf of the respondents, the law officer of the second respondent was examined as R.W1. On behalf of the claimants, 13 documents were marked as Exhibit P1 to Exhibit P13. On behalf of the second respondent, the final report and the rough sketch were marked as Exhibit R1 and Exhibit R2.

6. The Tribunal, based on the evidence available on record, came to the conclusion that the deceased has also contributed to the accident and hence, fixed contributory negligence at the rate of 10% on the deceased. The Tribunal had fixed the monthly income of the deceased at Rs.9,000/- and awarded a sum of Rs. 14,47,020/- after deducting



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10% towards the contributory negligence. Aggrieved by the same, the claimants have come before this court by way of this appeal.

7. The learned counsel for the appellants/claimants submitted that the Tribunal failed to take into consideration the evidence of eyewitness, PW2 and hence, erred in fixing 10% on contributory negligence on the deceased. The learned counsel further submitted that the amount of Rs. 9000/- fixed as monthly income of the deceased was very much on the lower side having regard to the fact that the accident had occurred in the year 2015. The learned counsel also submitted that the Tribunal erred in not granting amount under the head 'loss of love and affection' for the two minor children, namely the claimants 2 and 3.

8. The learned counsel for the second respondent submitted that Exhibit R1, final report filed by the police, would indicate that the negligence is on the part of the deceased. The learned counsel, by taking this court to the rough sketch marked as Exhibit R2, submitted that there was no fault on the part of the driver of the first respondent vehicle and the accident had taken place only due to the negligence of the deceased.

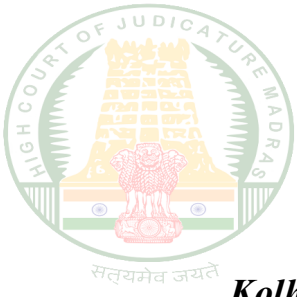


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9. A perusal of the rough sketch, Exhibit R2 would indicate that the car, belonging to the first respondent, was proceeding from Salem to Namakkal on the left side of the half road. The accident had occurred, after the deceased crossed the median with his two wheeler, on the farther half of road (left hand portion of road for first respondent). Therefore, it is clear that the deceased crossed the road in his two-wheeler without taking necessary precaution and without noting fast-moving car on the farther half portion of the road. Therefore, the Tribunal is justified in fixing a contributory negligence of 10% on the part of the deceased. The said finding requires no interference. As far as the income of the deceased is concerned, the Tribunal fixed it at Rs.9,000/- per month. The accident had occurred in the year 2015, therefore, this court feels that a sum of Rs.13,000/- per month would be appropriate, having regard to the arguments advanced by the claimants before the tribunal.

10. Before the Tribunal, the learned counsel for the claimants relied on the judgment of Hon'ble Apex Court in the case of *Neeta, w/o Kallappa Kadolkar and Others Vs Divisional Manager, MSRTC,*



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Kolhapur reported in **2015(1) TN MAC 161 SC** and claimed that monthly income should have been fixed at Rs.12,000/- per month. The same is noted by tribunal in its order. In the light of the arguments made before the Tribunal and having regard to the other facts and circumstances, this court fixes the monthly income of the deceased at Rs.13,000/- per month.

11. As per the law laid down by the Hon'ble Apex Court in **National Insurance Co.Ltd Vs Pranay Sethi and Others**, the claimants are entitled to 25% towards future prospects, therefore, the amount under the head 'loss of dependency is calculated as follows:-

$$\text{Rs.13,000} + 3,250 \text{ (13,000} \times 25\%) \times 12 \times 15 \times 3/4 = \text{Rs.21,93,750/-}.$$

12. The Tribunal has not awarded any amount towards loss of love and affection for the two minor children, the claimants 2 and 3. Therefore, the claimants 2 and 3 are entitled to Rs.40,000/- each under the head 'loss of love and affection'. The compensation awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.16,07,840/- to



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Rs.23,62,750/-, break-up as follows -

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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	15,18,840/-	21,93,750/-	Enhanced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Loss of Estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of love and affection	NIL	80,000/-	Granted
6.	Transportation expenses	5,000/-	5,000/-	Confirmed
7	Medical Bills	14,000/-	14,000/-	Confirmed
	Total	16,07,840/-	23,62,750/- -	Enhanced by Rs.7,54,910/-

13. With the above modifications, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,07,840/- is hereby enhanced to Rs.23,62,750 /- The appellants/claimants are entitled to interest at the rate of 7.5% per



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annum (excluding the delay period, if any) from the date of filing of the claim petition till the date of realization. The second respondent/Insurance Company is directed to deposit the enhanced sum along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of copy of this judgment. On deposit of the enhanced sum, the appellants/claimants are entitled to withdraw the same along with interest and costs, less the amount if any, already withdrawn by filing a formal application before the Tribunal. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

04.02.2025

Index:Yes/No
Internet:Yes/No
nr

To

1. The Additional District Judge, FAC, Namakkal
Motor Accident Claims Tribunal,
Namakkal.
2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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