



C.M.A.No.2691 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2025

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CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.2691 of 2022

1.Vasuki

2.Minor Nayanthara

3.Minor Senthamilvalavan

4.Minor Tamilselvi

Venu (died)

Adhiyammal (died)

... Appellants

(Amended as per order in I.A.No.1667/2016, dated 25.01.2017)

(Minor Petitioners 2 to 4 rep. by their mother, next friend and guardian namely Vasuki, 1st Petitioner herein)

VS.

1.Ganesan

2.The Manager,

Cholamandalam M/S General Insurance Company Limited,

Situated at Dare House, 2nd Floor,

N.S.C.Bose Road, Chennai-1.

... Respondents



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PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance and set aside the award against the judgment and decree dated 09.03.2022 in M.A.C.T.O.P.No.728 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Thiruvannamalai.

For Appellants : Mr.F.Terry Chella Raja
for M/s.M.Malar

For R2 : M/s.R.Sree Vidhya

For R1 : Notice Dispensed With

J U D G M E N T

The claimants have filed this appeal seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai in M.C.O.P.No.728 of 2013, dated 09.03.2022.

2. It is the case of the appellants/claimants that the husband of the 1st claimant, father of the claimants 2 to 4 and son of the claimants 5 and 6 (5th claimant died pending Original Petition and 6th respondent also died



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pending appeal) namely Senthil died in a road accident that had occurred on 19.02.2011. It was the case of the claimants that the deceased was standing on the extreme left hand side in mud portion of the main road and the Tipper Lorry belonged to the 1st respondent insured with the 2nd respondent came in a rash and negligent manner and dashed against him. As a result of the accident, the deceased sustained grievous injuries and died in hospital. Therefore, a claim petition was filed seeking compensation of Rs.20,00,000/-.

3. The 1st respondent remained *exparte* before the Tribunal. The 2nd respondent/Insurance Company filed counter and resisted the claim on the ground that the accident had occurred only due to the negligence of the deceased. The 2nd respondent-Insurance Company also denied the age, income and avocation of the deceased and sought for dismissal of the claim petition.

4. Before the Tribunal, the 1st claimant was examined as PW.1 and one another witness was examined as PW.2. On behalf of the claimants, 5 documents were marked as Exs.P1 to P5. On behalf of the 2nd



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respondent/Insurance Company, Taluk Supply Officer was examined as
RW.1 and Typist, RTO Office, Villupuram, was examined as RW.2 and 3
documents were marked as Exs.R1 to R3.

5. The Tribunal based on the evidence available on record came to the conclusion that accident had occurred only due to the negligence on the part of the driver of the Tipper Lorry belonged to the 1st respondent. However, the Tribunal fastened 15% contributory negligence on the part of the deceased on the ground that he did not possess valid driving licence at the time of accident. The Tribunal quantified the compensation at Rs.18,59,500/- and deducted 15% towards contributory negligence (i.e., $\text{Rs.18,59,500} - 15\% = \text{Rs.15,80,575/-}$). Aggrieved by the same, the claimants have come before this Court.

6. The learned counsel appearing for the appellants/claimants would submit that failure to hold driving licence is not a ground to fix contributory negligence on the part of the deceased, when there is no positive evidence to show that he had driven the vehicle in a rash and negligent manner. The learned counsel further submits that the deceased was employed in Bricklin



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and he was earning a sum of Rs.10,000/- per month at the relevant point of time. However, the Tribunal, fixed the notional income of the deceased at Rs.7,500/- per month and the same needs enhancement.

7. The learned counsel appearing for the 2nd respondent/Insurance Company would submit that failure to hold driving licence is a violation of Motor Vehicles Act, 1988 and therefore, the Tribunal was justified in fixing 15% contributory negligence on the part of the deceased. The learned counsel further submits that the claimants have not produced any documents to prove the avocation and income of the deceased and hence, taking into revival circumstances, the Tribunal was justified in fixing Rs.7,500/- per month as notional income of the deceased.

8. The Tribunal based on the evidence of PW.1 and PW.2 and also contents of FIR marked as Ex.P1 and final report marked as Ex.P4 came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the 1st respondent. However, it proceeded to fix contributory negligence only on the ground, the deceased failed to produce valid driving licence.



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9. Non-possession of driving licence *per se* cannot be considered as a negligence contributing to accident, though it would amount to violation of law. In order to fasten contributory negligence on the part of the deceased, there must be positive evidence available on record to show that he had driven the vehicle in a rash and negligent manner or he also contributed to the accident. In the case on hand, absolutely there is no positive evidence available on record to fasten contributory negligence on the part of the deceased.

10. In this regard it would be appropriate to refer the judgment of the Apex Court in ***Sudhir Kumar Rana vs. Surinder Singh and others*** reported in ***CDJ 2008 SC 862 = 2008 (12) SCC 436***, the relevant portion reads as follows:-

“8. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini-truck which was being driven rashly and negligently. It is



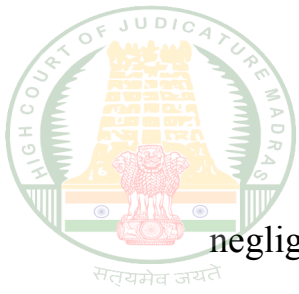
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one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.”

11. The above view was affirmed and followed subsequently by a Three Member Bench of Apex Court in ***Dinesh Kumar vs. National Insurance Company Ltd., and others***. Therefore, finding rendered by Tribunal that the deceased contributed to accident by his mere failure to possess driving licence by placing reliance on ***M.Ramya vs. G.Ekambaram and another*** reported in ***2021 (1) TNMAC 451***, is unsustainable in view of law declared by Apex Court in the above mentioned judgments.

12. In view of the law laid down by the Apex Court in the above mentioned cases, this Court comes to a conclusion that mere non-possession of driving licence *per se* cannot be the reason for fixing contributory



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negligence on the deceased and hence, the fixation of 15% contributory negligence on the part of the deceased is set aside.

13. In the claim petition, it was stated by the claimants that the deceased was employed as Bricklin Labour and he was earning a sum of Rs.10,000/- per month. However, no documentary evidence has been produced to prove the employment or avocation of the deceased. Even if there is no evidence to prove the income of the deceased, this Court can fix the notional income taking into consideration the facts and circumstances of the case. In the case on hand, the accident had occurred in the year 2011, if we follow the guidelines issued by the Division Bench of this Court in *Andal and others vs. Avinav Kannan and others* reported in *MANU/TN/6368/2018*, the notional income can be fixed at Rs.8,415/-. Therefore, the same is rounded to Rs.8,500/-. In that case, the claimants are entitled to Rs.18,20,700/- towards loss of dependency (Rs.8,500 x 1.4 x 12 x 17 x 3/4). The Tribunal rightly granted 40% future prospects and applied multiplier of 17, taking into consideration the age of the deceased was 30 years at the time of death.



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14. The Tribunal awarded a sum of Rs.2,20,000/- under the head loss of consortium. The 1st claimant is entitled to Rs.40,000/- towards loss of consortium. The minor claimants 2 to 4 are entitled to Rs.1,20,000/- under head loss of love and affection. The claimants 5 and 6 are entitled to Rs.80,000/- under the head filial consortium. Though 5th claimant died pending original petition, at the time of filing claim petition he was alive, the benefit of his estate will go to the 6th claimant and minor claimants 2 to 4, who are his legal heirs. Therefore, the claimants are entitled to Rs.2,40,000/- under the head loss of consortium, love and affection and filial consortium.

15. The Tribunal granted 10% enhancement on the conventional head by applying the law laid down by the Apex Court in ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680***. The accident occurred in the year 2011, well prior to ***Pranay Sethi*** case, therefore, the question of applying 10% enhancement once in three years will not arise in this case. Therefore, the amount awarded by the Tribunal under the heads loss of estate and funeral expenses are reduced to Rs.15,000/- each. In all the claimants are entitled to Rs.20,90,700/-.



Accordingly, the award passed by the Tribunal is modified as follows:-

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court	Remarks
1.	Loss of Dependency	Rs.16,06,500/-	Rs.18,20,700/-	Enhanced
2.	Loss of Consortium	Rs.2,20,000/-	Rs.2,40,000/-	Enhanced
3.	Loss of Estate	Rs.16,500/-	Rs.15,000/-	Reduced
4.	Funeral Expenses	Rs.16,500/-	Rs.15,000/-	Reduced
	Total	Rs.18,59,500/-	Rs.20,90,700/-	Enhanced
	Less 15% Contributory Negligence	Rs.2,78,925/-	-	Set Aside
	Total	Rs.15,80,575/-	Rs.20,90,700/-	Enhanced by Rs.5,10,125/-

16. It is seen from the records that the parents of the deceased namely claimants 5 and 6 are not alive. Therefore, the minor claimants 2 to 4 are entitled to Rs.4,00,000/- each. The remaining amount of Rs.8,90,700/- can be withdrawn by the 1st claimant.

17. In view of the discussions made earlier, the compensation awarded by the Tribunal is enhanced to Rs.20,90,700/- from Rs.15,80,575/-. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.20,90,700/- together with interest at the rate of 7.5%



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per annum from the date of claim petition to the date of realisation, after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.728 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai, within a period of six weeks from the date of receipt of copy of this judgment.

18. The 1st appellant/1st claimant namely wife of the deceased shall be permitted to withdraw her proportionate share from the total compensation amount along with interest and costs, less the amount if any, already withdrawn, by making formal application before the Tribunal.

19. The appellants 2 to 4/claimants 2 to 4 being minors, their respective shares are directed to be invested in anyone of the Nationalized Banks under a Fixed Deposit Scheme **for a period of three years** which shall be renewed periodically until they attain majority and the 1st appellant/1st claimant, being the Natural Guardian of the minors/claimants 2 to 4, is permitted to withdraw the interest accrued thereon **once in three months** and the same shall be used for the welfare of the minor appellants 2 to 4/claimants 2 to 4.



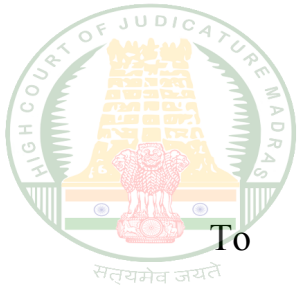
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WEB COPY 20. With the above directions, the Civil Miscellaneous Appeal is

Allowed. The appellants/claimants are directed to pay applicable additional court fee. No costs.

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Index :Yes
Speaking order :Yes
Neutral Citation :Yes
dm



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To

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1.The Motor Accident Claims Tribunal,
Special Sub Court, Thiruvannamalai.

2.The Manager,
Cholamandalam M/S General Insurance Company Limited,
Situated at Dare House, 2nd Floor,
N.S.C.Bose Road, Chennai-1.

3.The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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