



C.M.A.No.3523 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2025

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

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1. Amaravathi
 2. Radhika
- ...Appellants

Vs.

1. M.Thennarasu
 2. L.Manivanna Narayanan
 3. The Branch Manager,
The Oriental Insurance Company Limited,
AA Bhavanam 1st Street, 1st Floor, No.3/11,
Indian Bank Colony, Narayanapuram,
Madurai – 625 014.
- ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, challenging the order dated 02.11.2023 made in MCOP.No.394 of 2019 on the file of the MACT Tribunal, Additional District Court, Hosur.

For Appellants : Mr.S.P.Yuaraj

For Respondents : Mrs.R.Rathna Thara, for R3
: Notice dispensed with, for R1 & R2



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JUDGMENT

WEB COPY This Civil Miscellaneous appeal has been filed challenging the award and decree passed in MCOP.No.394 of 2019 dated 02.11.2023 on the file of the MACT Tribunal, Additional District Court, Hosur.

2. Mrs.R.Rathna Thara, learned counsel takes notice on behalf of the 3rd respondent. In view of the consent expressed by the learned counsel on either side, this petition is taken up for final disposal at the admission stage itself.

3. It is the case of the claimants that, on 12.05.2019 at about 14.30 hours, when the deceased Ranjith Kumar was travelling as a pillion rider in Bajaj Pulsar bearing Regn.No.TN-70-AA-8583 driven by one Anil Kumar along with one another pillion rider on Bagalur to Housr Road, at that time, as the 1st respondent/driver of the Eicher lorry bearing Regn.No.TN-59-BD-0120 owned by the 2nd respondent insured with the 3rd respondent which was running in front of the two wheeler in which the deceased was travelling, drove the same in a rash and negligent manner and applied



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sudden brake, the bike in which the deceased Ranjith Kumar was travelling hit on the right rear safety bumper of the Eicher lorry, due to which, the deceased Ranjith Kumar sustained grievous injuries and succumbed to the same. Thereby, the appellants, who are the dependents of the deceased Ranjith Kumar filed a claim petition in MCOP.No.394 of 2019 claiming a compensation of Rs.40,00,000/-. Before the Tribunal, the claimants examined four witnesses viz. P.W.1 to P.W.4 and marked exhibits P.1 to P.30 and on the side of respondents, no witnesses were examined, however, exhibits R.1 to R.3 were marked. After trial, the Tribunal, on appreciation of oral and documentary evidence, though came to a conclusion that the accident had taken place solely due to the rash and negligent driving on the part of the 1st respondent, however, fixed 50% contributory negligence on the part of the deceased and awarded a meagre sum of Rs.11,36,156/- towards compensation for the death of the deceased Ranjith Kumar. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have come up with this appeal seeking enhancement of compensation.



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4. Learned counsel for the appellants submitted that the above said accident happened solely due to the rash and negligent driving on the part of the 1st respondent, for which, the FIR came to registered as against the 1st respondent and the accident is of the year 2019 and at the time of accident, the deceased was only aged about 20 years and was working in Indian Designs Exports Ltd., and was earning a sum of Rs.20,000/- per month, however, the tribunal had taken the notional income of the deceased as Rs.10,750/-, which is very meagre and the same is contrary to the ratio laid down by the Hon'ble Apex court in catena of decisions and thereby, the same has to be increased to Rs.20,000/- and the compensation awarded under other heads are also on the lower side and the same needs to be enhanced. Learned counsel further submitted that, the tribunal had fixed a contributory negligence of 50% on the part of the deceased solely on the ground that, three persons have travelled in the two wheeler in which the deceased was travelling at the time of accident, which is wholly unsustainable and the same is contrary to the decision of the Hon'ble Apex court in the case of ***Mohammed Siddique & Another Vs. National Insurance CO. Ltd., & others*** reported in ***2020 (1) TN MAC 161 (SC)***



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(C.A.No.79 of 2020 (SLP.(C).No.9618 of 2018 dated 08.01.2020)) and

thereby, the same has to necessarily be set aside. Accordingly, he prayed for appropriate orders.

5. Per contra, the learned counsel appearing on behalf of the 3rd respondent-Insurance Company contended that, at the time of accident, three persons have travelled in the motorcycle in which the deceased Ranjith Kumar travelled, which is a clear violation of policy condition and the same is also strictly prohibited under the Motor Vehicles Act. Thereby, the tribunal, after careful consideration of all the above said facts had rightly fixed 50% contributory negligence on the part of the deceased, and the same does not warrant any interference of this Court. Further, the compensation awarded by the tribunal is already on the higher side and the same does not require any further enhancement. Accordingly, he prayed for dismissal of this appeal.

6. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.



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7. The factum and manner of the accident is not disputed by the parties and therefore, this Court is not venturing into the same.

8. Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2019 and at the time of accident, the deceased was aged about 19 years and was working in an Export company and the tribunal has fixed the net salary of the deceased as Rs.10,750/- on the basis of Ex.P.6, monthly salary certificate and the tribunal has not spelt out the other deductions which have been made from the salary of the deceased. In such circumstances, this Court is of the opinion that it would be safe to fix the monthly income of the deceased at Rs.12,000/-. Hence, the income of the deceased Ranjith Kumar is fixed at Rs.12,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in **2017 (16) Supreme Court Cases 680**, the income per month is quantified at Rs.16,800/-. Further, as the deceased is a Bachelor, the 1/3rd deduction towards the personal expenses of the deceased made by the tribunal is erroneous and necessarily 50% ought to have been deducted.



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Hence, after deducting 50% towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.8,400/- per month and the deceased being aged about 19 years, as evidenced from the records, adopting the multiplier of 18 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the loss of income to the family is arrived at $\text{Rs.8,400/-} * 12 * 18 = \text{Rs.18,14,400/-}$.

9. Insofar as the compensation awarded under the other heads are concerned, the tribunal had awarded a sum of Rs.40,000/- under the head 'Loss of Consortium', which is very meagre. This Court is inclined to enhance the said amount to Rs.80,000/- under the composite head of 'Loss of Consortium' and 'Loss of Love & Affection'.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-



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Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of dependency	21,67,200/-	18,14,400/-
Medical bills	30,112/-	30,112/-
Loss of consortium	40,000/-	80,000/-
Transportation	5,000/-	5,000/-
Funeral Expenses	15,000/-	15,000/-
Loss of estate	15,000/-	15,000/-
Total	22,72,312/- After deducting 50% towards contributory negligence, the total compensation is fixed at Rs.11,36,156/-	19,59,512/-

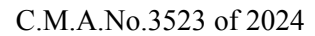
11. Insofar as negligence is concerned, the tribunal had fixed 50% contributory negligence on the deceased solely on the ground that at the time of accident, three persons have travelled in the two wheeler in which the deceased had travelled.

12. In this context, this Court perused the decision of the Hon'ble Apex court in the case of *Mohammed Siddique* (Stated supra) relied upon by the learned counsel for the appellants, wherein the Apex Court has held



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that, the fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence and at the most it would make him guilty of being a party to the violation of the law and Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeler/motor cycle, not to carry more than one person on the motor cycle. Section 194-C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation



13. In the case on hand, it is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been avoided, if three persons were not riding on the motor cycle. Therefore, the argument relating to contributory negligence on account of more than two persons riding in the motor cycle is highly erroneous. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributing either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of 50% towards contributory negligence, is highly unjustified and the same deserves to be set aside.



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14. In such view of the matter, this Court finds that the contributory negligence of 50% fixed on the deceased is without any proper material and therefore, the same cannot be sustained. Hence, this Court fixes the entire negligence on the part of the 1st respondent/driver of the Eicher lorry and thereby, the 3rd respondent/insurance company is liable to pay the entire compensation in favour of the appellants.

15. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.394 of 2019 is modified by enhancing the compensation amount from **Rs.11,36,156/-** to **Rs.19,59,512/-**. The 3rd respondent Insurance is directed to deposit the entire award amount to the credit of MCOP.No.394 of 2019 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. In the above compensation arrived at by this Court, the 1st appellant is entitled to a sum of Rs.15,59,512/- and the 2nd appellant is entitled to a sum of Rs.4,00,000/-



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with proportionate interest and costs. On such deposit being made, the Tribunal is directed to transfer the compensation amount to the bank account of the appellants directly through RTGS within a period of two (2) weeks thereafter. If any additional court fee is to be paid by the appellants, the same shall be paid by the appellants and proof thereof shall be produced before the Tribunal. It is made clear that the appellants are not entitled to any interest for the default period, if any. There shall be no order as to costs in this appeal.

06.01.2025

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NCC : Yes/No
Index : Yes/No
Speaking order : Yes/No

To:

The MACT Tribunal, Additional District Court,
Hosur.



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M.DHANDAPANI, J.

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