



CMA No.2575 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.04.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

CMA No.2575 of 2019

1. Latha @ Rajamani

2. Saravana Kumar

... Appellants

Vs

1. Sudharsan

2. The New India Assurance Co. Ltd,
Divisional Office, Sri Vari Complex,
2nd Floor, New Bus Stand Road,
Meyyanor, Salem 636 004.

3. Dharmalingam

4. United India Insurance Co. Ltd.,
TP HUB Peramannur Mani Road,
Salem -7.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 20.04.2018 made in MCOP No.872 of 2011 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellant : Mr.K.Kuppusamy

For Respondents : Ms.R.Sreevidya for R2
No appearance for R3
R1 and R4 set exparte



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J U D G M E N T

The appellants herein who are the mother and brother of the deceased Krupashree has preferred this Civil Miscellaneous appeal against the Judgment and decree made in M.C.O.P.No.872 of 2011, dated 20.04.2018 passed by the Motor Accident Claims Tribunal, Special District Court, Salem for enhancement.

2. The claim petition was filed under Section 166 of the Motor Vehicle Act, by the appellants\claimants claiming compensation of Rs.25 lakhs on the death of her son Krupashree in the road accident that had taken place on 19.09.2010.

3. The learned counsel for the appellants / claimants would stress upon that the deceased was travelling as a pillion rider, but the Tribunal has fixed 15 % towards contributory negligence on the part of the deceased as she was travelling without helmet. The learned counsel would further contend that the amount awarded under various heads are very meagre. It was further put forth that no amount was awarded under the head 'love and affection' though the mother of the deceased lost her daughter who was aged about 22 years.



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4. Per contra, the learned counsel for the 2nd respondent /Insurance Company, would vehemently argue that as the deceased travelled in a two wheeler without helmet, the Tribunal has fixed 15% contributory negligence. The learned counsel would further contend that the amounts awarded under different heads appear to be reasonable and the same need not be disturbed.

5. Before the Tribunal, in order to substantiate the averments made in the claim petition, the mother of the deceased was examined as P.W.1, the rider of the two wheeler in which the deceased was travelling was examined as P.W.2 and one Venkatesh was examined as P.W.3 and Exs.P1 to P30 were marked. On the side of the respondents, Ex.R1 has been marked. No witness was examined on the side of the respondents.

6. Rival submissions are considered and perused the materials available on record.

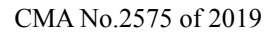
7. The manner in which the accident has taken place is not in



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dispute. As per the evidence of P.W.2, Shalini who had ridden the two wheeler, when P.W.2 and the deceased were proceeding along Perambur Anna Nagar Tank Road in a two wheeler, an Auto bearing Registration No.TN 05 P 6129 was driven by its driver in a rash and negligent manner and hit against the two wheeler, and as a result of which, both the rider and the pillion rider were thrown way and due to the same, the pillion rider Krupashree died on spot. However, the Insurance company has taken a stand that since the pillion rider travelled without helmet,she died. Hence, the contributory negligence fixed at 15 % is correct.

8. Section 129 of the Motor Vehicles Act postulates that the driver / rider shall wear a protective headgear or helmet while riding or driving the motorcycle or scooter and the object of the provision is that in order to save the persons who are travelling in the two wheeler when they meet road accident. The deceased who was aged 22 years at the relevant point of time while travelling in a two wheeler as a pillion rider along with P.W.2, had unfortunately met with an accident due to rash and negligent driving of an Auto driver and lost her life. It is pertinent to note that the deceased Krupashree secured B.Tech degree in the month of April 2010 and within five months, she met with an accident. It is also seen from documents marked on



9. Taking into account of all the above facts and circumstances as mentioned supra coupled with the fact that the deceased travelled as a pillion rider without helmet, this Court is inclined to fix 5% towards contributory negligence on the part of the deceased. Henceforth, the amount for loss of earnings is arrived at as mentioned hereunder:

10. Further, as no amount was awarded towards love and affection, considering the fact that the mother who is the first claimant herein lost her daughter at the age of 22 years in a road accident, a sum of Rs.25,000/- is



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hereby granted towards loss of love and affection. Except the above modifications, all other amounts awarded appear to be just and reasonable and they do not warrant any interference by this Court. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning	12,85,200 (71,400X18)	14,36,400 (79,800X18)	enhanced
2.	Funeral expenses	15,000	15,000	confirmed
3.	Loss of Estate	15,000	15,000	confirmed
4.	Loss of love and affection	Nil	25,000	granted
	Total	13,15,200	14,91,400	Enhanced by Rs.1,76,200 / -

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,15,200/- is hereby enhanced to **Rs.14,91,400 /- (Rupees Fourteen lakhs Ninety One thousand and four hundred only)** together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent / the New India Assurance Co. Ltd., is directed to deposit



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the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first appellant/mother of the deceased is entitled to withdraw a sum of Rs.12,41,400/-, the second appellant/brother of the deceased shall withdraw a sum of Rs.2,50,000/- on filing proper application. The appellants are directed to pay the Court fee, if any on the enhanced amount of compensation. No costs.

21.04.2023

vum

Index: Yes/No

Speaking order / Non speaking order

To

1. The Motor Accident Claims Tribunal,
Special District Court, Salem.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.



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