

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 02.02.2017****Coram:****THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN****C.M.A(MD)No.61 of 2017**

- 1.A.Chithra
- 2.Minor A.Manikandan
- 3.K.Chinnammal
- 4.A.Kulandaivel

Minor second appellant is represented
by his mother and natural guardian,
the first appellant herein A.Chitra

..Appellants/Petitioners

.vs.

- 1.G.A.Sivakumar

- 2.The Manager,
The Oriental Insurance Company Limited,
Extension Counter,
No.204, Hospital Road,
Near Sundaram Finance,
Ooty- 643 001.

- 3.R.Shanmugam

..Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgement and decree made in M.C.O.P.No.251 of 2012, dated 15.10.2014, on the file of the Motor Accident Claims Tribunal(District Judge), Karur.

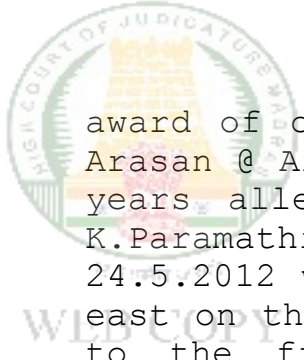
For Appellants : Ms.Jenifar Bibin
for M/s.T.Selvakumaran
For Respondents : No appearance
1 and 3
For Respondent-2 : Mr.K.Bhakaran

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgement and decree made in M.C.O.P.No.251 of 2012, dated 15.10.2014, on the file of the Motor Accident Claims Tribunal (District Judge), Karur.

<https://hcservices.ecourts.gov.in/hcservices/>

2.The claimants are before this Court aggrieved over the



award of compensation Rs.6,36,000/- awarded for the death of one Arasan @ Arasappan, husband of the first appellant, aged about 34 years alleged to be a worker in M/s. Venkatarama Crusher, K.Paramathi earning about Rs.7500/-, in the accident occurred on 24.5.2012 when he was riding his TVS 50 motor cycle from west to east on the left hand side and dashed down by an omni van belonging to the first respondent, insured with the second respondent Insurance Company. Therefore the claim petition.

3.The Tribunal based on evidence adduced before the Court, determined that the driver of the omni bus alone is responsible for the accident and fixed the liability on the owner of the van to be paid by the Insurance Company, the second respondent herein to the tune of Rs.6,36,000/-

4.Heard Ms.R.Jenifar Bibin, learned counsel appearing on behalf of Mr.T.Selvakumaran, learned counsel on record for the appellants and Mr.K.Bhaskaran, learned counsel appearing for the second respondent/Insurance Company.

5.Mr.K.Bhaskaran, learned counsel for the second respondent/Insurance Company would submit that the rider of the two wheeler did not wear helmet at the time of accident and therefore contributory negligence has to be fixed on him. However, the learned counsel for the appellant would submit that the negligence was rightly fixed by Tribunal on the driver of the omni van and therefore there is no contributory negligence on the part of the deceased. Further the learned counsel for the appellant would submit that no future prospects was added to the income of the deceased. Moreover, the Tribunal has only determined Rs.4500/- as income of the deceased, whereas the deceased was earning Rs.7,500/-p.m.. In this regard, he relied upon a decision of the Division Bench of this Court **M.Shenbagam and others .vs. V.Vinod Kumar and another reported in 2013(2) TN MAC 450(DB)**. Other amounts awarded also were on the lower side, he would submit.

6.A perusal of the records would show that the deceased was riding his two wheeler in the right direction as proved by P.W.2 eyewitness. Further, there is no rebuttal evidence on the side of the respondents. Therefore the Tribunal based on filing of FIR registered against the driver of the van(Ex.P1) and also relying upon Ex.P3- rough sketch and oral evidence of P.W.2, rightly come to the conclusion that the driver of the van was responsible for the accident.

7.However, as rightly pointed out by Mr.K.Bhaskaran, learned counsel for the second respondent, the deceased rider was not wearing helmet at the time of accident. Therefore contributory negligence has to be fixed. Section 128 of the Motor Vehicles



Act mandates wearing of hit-wear/helmet and the rider shall wear helmet. It is not the case of the claimants that the rider was wearing helmet as per section 129 of the Motor Vehicles Act, 1988. Therefore 15% contributory negligence has to be fixed on the deceased driver.

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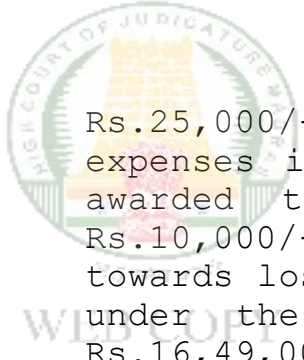
8.The accident occurred on 24.5.2012, in the business of any income proof, the Tribunal determined Rs.4,500/- as monthly income which is on the lower side. The Honourable Supreme Court in **Syed Sadiq .vs. The Divisional Manager, United India Insurance Company Limited reported in 2014(1) TN MAC 459(SC)** determined the monthly income of a vegetable vendor who sustained injury in the accident occurred on 14.2.2008, whereas in this case the accident occurred after four years on 24.5.2012. Hence this Court is inclined to follow Rs.6,500/- as income of the deceased, as per the above judgement.

9.No future prospects was added by the Tribunal as per the judgement in **Rajesh and others .vs. Rajbir Singh and others reported in 2013(3) CTC 883**. Accordingly 50% is added as the deceased was aged about 34 years as per Ex.P2-postmortem certificate. If 50% is added towards future prospects, the income would be Rs.6500/- + 50% = Rs.9750/-

10.The size of the family is four. As per the judgement **Smt.Sarla Verma .vs. Delhi Transport Corporation reported in 2009 (2) TN MAC 1(SC)**, $1/4^{\text{th}}$ has to be deducted. The loss of income after deduction would be Rs.6500/-+5%- $1/4^{\text{th}}$ = Rs.7312.50/-.

11.The age of the deceased as already stated was 34 years at the time of accident. As per Ex.P2 and the appropriate multiplier as per **Sarla Verma's case**, is 16 and the loss of income would be $6750+50\%-1/4 \times 12 \times 16$ + Rs.14,04,000/-.

12.The Tribunal awarded a sum of Rs.10,000/- for loss of consortium. The first appellant was awarded a sum of Rs.10,000/-. It is very pathetic as the first appellant lost her husband at the age of 28. Losing her husband itself is very painful, that too, at the age of 28 and that she suffered physically, psychologically and mentally because of the loss of her companion throughout her life. It cannot be compensated by any amount of money. In an endeavour to provide complete justice, this Court enhance the award of Rs.10,000/- towards loss as consortium as Rs.1,00,000/-. Similarly Rs.40,000/- has been awarded towards loss of love and affection to the appellants and the same is liable to be enhanced. The second appellant was hardly 7 years, at the time of accident who lost her love and affection of the father throughout his life and therefore a sum of Rs.50,000/- is awarded for appellants 1 and 2, each Rs.25,000/-. Similarly parents of the deceased namely appellants 3 and 4 are entitled to each



Rs.25,000/- = Rs.50,000/- .Rs.10,000/- was awarded for funeral expenses is very low is enhanced to Rs.25,000/-. No amount was awarded towards transport expenses and therefore a sum of Rs.10,000/- was awarded under the said head. No amount was awarded towards loss of estate. Therefore a sum of Rs.10,000/- was awarded under the said head. Thus the total compensation comes to Rs.16,49,000/-. Since this Court determines negligence at 15% on the part of the deceased for not wearing helmet at the time of accident while he was riding two wheeler, the compensation would be 16,49,000/- - Rs.2,47,350(15%) = 14,01,650/-, which was rounded to Rs.14,00,000/- The interest rate at 7.5% awarded by the Tribunal remains unaltered. Out of the said amount the first appellant is entitled to Rs.6,00,000/-, the second appellant is entitled to Rs.6,00,000/- and third and fourth appellants each are entitled to Rs.1 lakh each, totalling a sum of Rs.14 lakhs.

13. Thus the award of the Tribunal is enhanced from Rs.6,36,000/- to Rs.14,00,000/-. The second respondent/Insurance Company is directed to deposit the enhanced award amount deducting the amount already deposited with proportionate accrued interest and costs from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to transfer the compensation amount of the claimants as per the above apportionment made along with proportionate accrued interest and costs within a period of two weeks by RTGS after getting the bank accounts of the claimants. In respect of the minor second claimant, his share in the award amount along with proportionate interest and costs shall be deposited in interest bearing fixed deposit in any one of the nationalized bank till the minor attains majority. For the enhanced amount of compensation, the appellants shall pay the court fee within ten days before the Registry.

14. The Civil Miscellaneous Appeal is allowed on above terms. No costs.

Sd/-
Assistant Registrar(Writ)

/True Copy/

Sub Assistant Registrar

vsn

To

1. The District Judge,
(District Claims Tribunal)
Karur.



2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.T.Selvakumaran, Advocate Sr.No. 5867

+1cc to Mr.K.Bhaskaran, Advocate Sr.No. 5927

JAM/02.03.17 /BS/5p-5c

C.M.A(MD)No.61 of 2017
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