

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-09-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.202 of 2020

And

C.M.P.No.1556 of 2020

National Insurance Company Ltd.,
Third Party Cell HUB,
No.46, Regina Mansion,
Moore Street,
Parrys,
Chennai-600 001.

.. Appellant/2nd Respondent

vs.

1.Jebamani

2.Surendiran

3.Alice Backiyam

4.Jency

..Respondents/Claimants

5.Magesh

.. Respondent/1st Respondent

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.09.2019 passed in M.C.O.P. No.3482 of 2017 on the file of the learned II Judge, Small Causes Court No.II-cum-Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mr.D.Bhaskaran

For Respondents-1to4 : Mr.F.Terry Chella Raja

For Respondent-5 : Ex Parte

J U D G M E N T

The judgment and decree dated 20.09.2019 passed in M.C.O.P. No.3482 of 2017 by the learned II Judge, Small Causes Court No.II-cum-Motor Accidents Claims Tribunal, Chennai, is under challenge in the present Civil Miscellaneous Appeal.

2. The National Insurance Co. Ltd., is the appellant, filed the present Civil Miscellaneous Appeal, questioning the quantum of compensation awarded by the Tribunal.

3. The accident occurred on 02.05.2017 at about 03.45 P.M., at GNT Road, near Vadakarai Signal Redhills Bridge. The Madhavaram Traffic Investigation registered a case in Crime No.129 of 2017.

4. The accident occurred while the deceased was riding his motorcycle bearing Registration No.TN-02-AQ-0056 and he sustained fatal injuries and died on the spot.

5. The claim petition is filed by the parents, married sister and unmarried sisters.

6. The Tribunal adjudicated the issues with reference to the documents and the evidences produced by the respective parties.

7. As far as the negligence aspect is concerned, the Tribunal arrived a conclusion that as per Exs.P-1 to P-5, the accident occurred due to rash and negligent driving of the driver of Eicher Van bearing Registration No.TN-20-L-6228, which belongs to one Mr.Magesh.

8. Accordingly, the Tribunal considered the quantum of compensation to be fixed. The Tribunal awarded a total compensation of Rs.24,30,500/-.

9. The learned counsel appearing on behalf of the appellant-Insurance Company mainly contended that the Tribunal committed an error in granting exorbitant compensation of Rs.24,30,500/-. There was no proper adjudication of the issue. The deceased had driven the motorcycle without having valid driving license. The deceased was also equally liable for the cause of the accident. In other words, the deceased also contributed for the accident and therefore, the negligence is to be apportioned equally. This apart, the Tribunal has erroneously granted 50% future prospects. Even as per the judgment of the Apex Court and the High Courts, considering the age of the deceased, 40% is applicable.

10. The learned counsel appearing on behalf of the respondents-claimants disputed the grounds raised by the appellant by stating that the Tribunal has considered the age of the deceased and further other aspects. The age of the deceased was 29 years and he was working as Senior Mechanic in Chennai Ford Ambattur. It is contended that the deceased was a permanent

employee of Ford Motor Company, Ambattur and therefore, the Tribunal is right in granting the award.

11. In reply, the learned counsel for the appellant-Insurance Company has stated that the deceased person is not a direct employee of the Ford Motor Company, Ambattur and that he was engaged by the Contractor to perform job in Ford Motor Company and therefore, he is not permanent employee of the Ford Motors and the Management of Ford Motors Company. This apart, the Tribunal has granted excess compensation under the other conventional heads and for all these reasons, the compensation granted is exorbitant and is to be reduced and a reasonable compensation is to be awarded to the claimants.

12. This Court is of the considered opinion that the deceased was not possessing the driving license. The negligence is fixed on the driver of the vehicle owned by Mr.Magesh. As far as the quantum of compensation is concerned, the Tribunal has committed an error in granting 50% future prospects. As per the judgment of the Apex Court, 40% future prospects alone is to be granted and this apart, compensation granted under the other conventional heads are also excessive and the total compensation of Rs.24,30,500/-, awarded by the Tribunal, deserves to be modified. In view of the facts and circumstances, this Court is inclined to modify the total compensation as detailed hereunder:-

	Rs.
Loss of Dependence (Rs.13,500/-+40%-1/2x12x17)	19,27,800/-
Loss of Consortium (Rs.40,000/-x4)	1,60,000/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Transportation Charges	10,000/-

Total	----- Rs.21,27,800/-
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Thus, the respondents/claimants are entitled for a total compensation of Rs.21,27,800/- with accrued interest at the rate of 7.5% per annum.

13. The appellant/Insurance Company is directed to deposit the modified award amount of Rs.21,27,800/- along with accrued interest, within a period of twelve weeks from the date of receipt of a copy of this judgment and on such deposit being made, the respondents/claimants are permitted to withdraw their

portion of the compensation as apportioned by the Tribunal in its award by filing an appropriate application before the Tribunal and payments are to be made through RTGS.

14. Accordingly, the judgment and decree dated 20.09.2019 passed in M.C.O.P. No.3482 of 2017 by the learned II Judge, Small Causes Court No.II-cum-Motor Accidents Claims Tribunal, Chennai stands modified and consequently, CMA No.202 of 2020 is allowed in part. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

Svn

To

1.The II Judge,
Small Causes Court No.II-cum-Motor Accidents Claims Tribunal,
Chennai.

+1cc to Mrs.M.Malar, Advocate SR.No.29683

CMA No.202 of 2020

RSV(CO)
GMY(12/05/2021)