IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2020

CORAM:

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1725 of 2013

(Through Video Conferencing)

1.C.Selvi
2.M.Chokkalingam ... Appellants/Petitioners

vs.

1.R.Ashok
2.Reliance General Insurance Co Limited,
No.23, Spur Tank Road,
Chetpet, Chennai 600 031.
(The 1st Respondent exparte in lower court,
hence notice may be dispensed with)... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in M.C.O.P.No.1467 of 2008 dated 17.02.2012 on the file of the Motor Accident Claims Tribunal (Addl.District Judge (Fast Track Court No.I) Chennai .

For Appellant : Mr.K.Varadhakamaraj

For R2 : Mr.Suresh Srinivasan for
Mr.K.Moorthy

R1 : Exparte

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellants-claimants against the impugned Judgment and Decree dated 17.02.2012 passed by the Motor Accident Claims Tribunal (Addl.District Judge, Fast Track Court No.I) Chennai in M.C.O.P.No.1467 of 2008.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.4,50,000/- as compensation after deducting contributory negligence on the part of the unknown lorry at 25% of the award together with interest at 7.5% per annum from the

date of filing of the claim petition till the date of deposit, to the appellants/claimants.

3. In the claim petition, it was stated that the deceased Balamurugan was sitting as a pillion rider on the motorcycle bearing Reg.No.22-AH-6477 driven by its rider on 15.12.2007. It was stated that it was driven in a rash and negligent manner. When an unknown lorry is said to have knocked the motorcycle down, as a result of which, the deceased Balamurugan sustained injuries and died.

4. The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent riding of the motorcycle by the rider belonging to the first respondent and fixed 25% contributory negligence on the part of the unknown lorry and directed the second respondent-Insurance Company, being the insurer of the motorcycle to pay a sum of Rs.4,50,000/- towards 75% of the award amount as compensation to the appellants.

5. The break up of the amount awarded by the Lower Court are summarised below:-

For loss of dependency Rs.3,000/- x 12x 14	Rs.5,40,000/-
Loss of Love and affection	Rs. 55,000/-
Funeral expenses	Rs. 5,000/-
Total Less: 25% negligence on the part of unknown lorry Net amount	Rs.6,00,000/- Rs.1,50,000/- ----------------- Rs.4,50,000/- -----------------

6.Aggrieved by the said order, the appellants-claimants have filed the present appeal for enhancement of compensation.

7. The learned counsel for the appellants submits that the Tribunal erred in fixing the multiplier 15 instead of 18 when

the age of the deceased was 20 years at the time of accident. He further submitted that the Tribunal has wrongly deducted 50% income of the personal expenses of the deceased. It is submitted that the Tribunal ought to have deducted only 1/3rd of the income towards personal expenses considering the young age of the deceased. It was also submitted that the Tribunal has not awarded any compensation towards loss of expectation and prayed for enhancement of the award of the Tribunal .

8. Per contra, the learned counsel for the 2nd respondent-Insurance Company submitted that the amounts awarded by the Tribunal under different heads are not meagre and the impugned order is well reasoned and requires no interference and therefore this civil miscellaneous appeal is liable to be dismissed.

9. I have considered the arguments advanced by the learned counsel for both sides and also perused the evidence available on record.

10. It is not clear on what basis the compensation has been awarded by the Tribunal. It is seen from the records that the Tribunal has relied on the Judgment of the Hon'ble Supreme Court reported in Shakthi vs. New India , (2011) 3 SCC (Cri) 848, by applying multiplier 15 considering the age of mother. The deduction towards the personal expenses of the deceased is to be restricted to half of the income. The 2nd respondent-Insurance Company has not questioned basis of liability. In absence of an appeal for R2 -Insurance Company, the liability fixed on the 2nd respondent-Insurance Company stands confirmed. As per the decision of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 121, wherein, it was held as follows:-

> 31.Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because

they will either be independent and earning, or married, or be dependent on the father".

10. The correct multiplier to be applied was 18 multiplier instead of 15 multiplier. Similarly the appellants are entitled for further amount towards future prospects as per the decision of the Hon;ble supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680, Therefore, 40% is to be added towards future prospects. As per the decision of the Hon'ble Supreme Court reported in Magma General Insurance Company Ltd. vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130 : 2018 Online SC 1546, thus the amount awarded towards filial consortium also is to be added.

11. Considering the same, the compensation awarded is modified under the various heads as follows:

Loss of earning capacity i) Income per month ii) Less 50% towards personal expenses of deceased ii) Add 40% future prospects iv) loss of income for 12 months (3150 x 12) v) Multiplier 18 (37800x18)	 Rs.4,500 Rs.2,250 ------------ 2,250 900 ------------ 3,150 Rs.37,800 Rs.6,80,400/-	 Rs.6,80,400/-
Loss of love and affection in filial consortium (40,000 x 2)		Rs. 80,000
Funeral expenses		Rs. 15,000
Total		*Rs. 7,75,400

Since liability is not distrubed, on the aforesaid sum of Rs.7,75,400/-, 25% is deducted towards negligence of the rider of the motorcycle Annadurai.

* Total Amount : Rs.7,75,400/-

Less 25% contributory negligence of rider of motorcycle Annadurai:Rs.1,93,850/-

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Net amount : Rs.5,81,550/-

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12. In the result, this Civil Miscellaneous Appeal is partly allowed. The 2nd respondent/Insurance Company is directed to deposit the above enhanced award amount now determined by this Court along with interest at 7.5% per annum from the date of the claim petition till the date of deposit and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the same equally, by filing suitable applications before the Tribunal. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kkd/jen

To:

1.The Motor Accident Claims Tribunal
Addl.District Judge, Fast Track Court No.I, Chennai .

Copy to

The Section Officer
VR Section High Court,
Madras

ln(co)

aa27/11/2020