

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.293 of 2016
and C.M.P.No.2392 of 2016

United India Insurance Co.Ltd.,
Tarapore Towers, 7th Floor,
No.826, Anna Salai, Chennai - 2. ...Appellant/2nd Respondent

Vs

1.P.Kalaivani,
W/o.Late R.Padmanaban,

2.P.Karthik,
S/o.Late R.Padmanaban,

3.P.Aiswariya,
D/o.Late R.Padmanaban,
1 to 3 residing at
No.7/2, Manigandan 6th Street,
Old Washermenpet,
Chennai -21. ...Respondents 1 to 3/Petitioners

4.U.N.Narayanan,
S/o.Narasaian,
Old No.42, New No.42, Anjaneyapuram,
9th Street, Chennai -13.
(4th Respondents remained Exparte) ...4th Respondents/

1st Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed under
Section 173 of Motor Vehicles Act, 1988, against the judgment
and decree dated 17.07.2014 made in M.C.O.P.No.1496 of 2012 on
the file of the Motor Accidents Tribunal, II Judge, Court of
Small Causes, Chennai.

For Appellant : Mr.M.Krishnamoorthy

For Respondent : Mr.F.Terry Chellaraja
For RR1 to 3
R4-Exparte

JUDGMENT

(Heard through video conference)

This appeal is preferred by the Insurance Company aggrieved by the quantum of compensation fixed by the Tribunal for the death of the auto driver aged about 54 years in a motor accident.

2. Heard the learned counsel for the appellant and the learned counsel for the respondent.

3. The learned counsel appearing for the Insurance Company would submit that the deceased was travelling as a pillion rider in the motor cycle, who was in drunken stage fell on his own and sustained head injury. There is a contribution on the part of the deceased by travelling inebriated state by not wearing helmet. The learned counsel would submit that the post-mortem certificate clearly indicates that he died due to head injury. He sustained injury due to fall from the vehicle. If he had worn the helmet, fatality would have been averted. Since he has contributed his death substantially, the compensation has to be proportionate.

4. The learned counsel made reliance on the judgment in A.Chitra and others Vs. G.A. Sivakumar and others reported in 2017 (1) TNMAC 423 and submitted that out of total compensation atleast 15% of the compensation should have been deducted by the Tribunal. Further he would submit that the compensation awarded on the non-conventional head are excessive and contrary to the principle laid down in the Pranay Sethi case.

5. The learned counsel appearing for the respondent would submit that the Hon'ble Supreme Court has taken different view for contributory negligence regarding violation. It a case reported in 2020 (1) TNMAC 161 it has held that for the violation of any traffic rules like three persons travelling in a motorcycle will tantamount to violation of traffic rules, which could be penalised under Motor Vehicles Act, per se they have not bear in attributing negligence.

6. Heard the rival submissions of the learned counsels. Perused the records. From records, it is seen that the deceased at the time of accident was running his livelihood as a Auto driver. The driving license has been marked by the claimant as Ex.P10, wherein the date of birth of the deceased is mentioned as 24.06.1957 which goes to show that at the time of accident he was 54 years. The possession of driving license gives an indication that the deceased was having a license to drive auto.

Hence, the Tribunal has fixed the monthly income of Rs.8,000/- per month, which this Court finds just and proper. Being a self-employed as pointed out by the learned counsel for the respondent/claimant as per Pranay Sethi case he is entitled for 10% for future prospects. At the same time as contended by the learned counsel for the Insurance Company for his contribution for not wearing helmet 15% has to be reduced as per the judgment of this Court in Chitra case which is directly on this point. Therefore this Court is inclined to interfere with the award by following the principal laid on the Pranay Sethi case in the following manner.

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	7,04,000	7,74,400 (By adding 10% future Prospect)	Enhanced
2.	Funeral Expense	25,000	15,000	Confirmed
3.	Loss of Consortium	75,000	40,000	Reduced
4.	Loss of Love and Affection	1,00,000	80,000	Reduced
5.	Medical Expenses	25,000	25,000	Confirmed
6.	Loss of Estate	50,000	15,000	Reduced
	Total	9,79,000	9,49,400	Reduced by Rs.1,42,410/-
	After reducing 15% towards contributory negligence		8,06,990	

7. Thus the total compensation payable is arrived at Rs.8,06,990/- with interest at the rate of 7.5%. The award shall be apportioned to the claimants as under:

- i. The 1st Claimant : Rs.4,50,000/-
- ii. 2nd and 3rd Claimants: shall share the remaining amount equally.

8. The learned counsel for the appellant states that the entire award amount has already been deposited in the M.C.O.P., account. If so, the claimants shall be permitted to withdraw their apportioned amount by filing necessary application. The excess amount shall be returned to the Insurance Company.

9. In the result, this Civil Miscellaneous Appeal is partly allowed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rst/rpl

To

1.The II Judge, Court of Small Causes,
Chennai.

2.The Section Officer,
VR Section,
Madras High Court.

C.M.A.No.293 of 2016
and C.M.P.No.2392 of 2016

VGII (CO)
RMP (07/04/2021)