



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.719 of 2021

1.Pounnammal
2.Devaraj
3.Rajaganapathi
4.Sasikumar
5.Pavayi (died)

.. Appellants/Claimants

Vs.

1.M.Raja

2.The Reliance General Insurance Company Limited,
Sree Lakshmi Complex,
1st Floor, Omalur Main Road,
Bharathi Street, Swarnapuri,
Salem - 4.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.02.2020 made in M.C.O.P.No.494 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.S.P.Yuaraj

For R2 : Mr.S.Arunkumar

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed challenging the portion of the award fixing 15% contributory negligence on the part of the deceased as well as for enhancement of compensation granted by the Tribunal in the award dated 03.02.2020 made in M.C.O.P.No.494 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

3.The appellants are the claimants in M.C.O.P.No.494 of 2018 on the file of the Motor Accident Claims Tribunal, Special



District Court, Salem. They filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Palanisamy, who died in the accident that took place on 29.11.2017.

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4. According to appellants on 29.11.2017, at about 07.30 P.M., while the deceased Palanisamy was travelling as pillion rider in the motorcycle bearing Registration No.TN 29 AE 5828 from Veerakkal to Karumalaikoodal road near Mariannan Kaattu Valaivu, the rider of the motorcycle drove the same in a rash and negligent manner at a high speed without minding the condition of the road. Due to the said rash and negligent driving, the said Palanisamy was thrown out from the motorcycle and sustained grievous head injuries. Immediately after the accident, the said Palanisamy was taken to Dharan Hospital, Salem and then shifted to Nimens Hospital, Bangalore. Inspite of treatment, the said Palanisamy succumbed to injuries on 01.12.2017. Therefore, the appellants filed the above said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of the said Palanisamy against the respondents, being the owner and insurer of the motorcycle respectively.

5. The 1st respondent - owner of the motorcycle remained exparte before the Tribunal.

6. The 2nd respondent-Insurance Company, insurer of the motorcycle filed counter statement and denied all the averments made by the appellants. The 2nd respondent denied the manner of accident as alleged by the appellants. According to the 2nd respondent, at the time of accident both the rider and pillion rider of the motorcycle were in a drunken mood. The rider of the motorcycle who was in a drunken mood could not able to control the speed of the motorcycle on seeing a tipper lorry, which was coming in the opposite direction. Due to the same, the deceased who was riding as pillion rider in the motorcycle owned by 1st respondent, fell into a pipe line which was adjacent to the main road and invited the accident. The deceased also contributed negligence to the accident. The appellants have to prove that the rider of the motorcycle was possessing valid driving license at the time of accident. The 2nd respondent denied the fact that the 1st respondent's motorcycle was having valid insurance policy at the time of accident. The 2nd respondent denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the appellants is highly excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st appellant examined herself as P.W.1, 3rd appellant was examined as P.W.2 and 16 documents were marked as Exs.P1 to P16. The 2nd respondent did not let in any oral and documentary evidence.

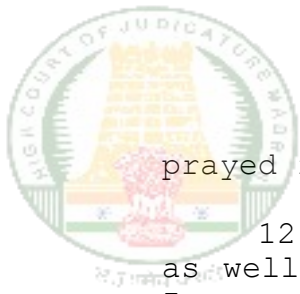


8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider of the motorcycle owned by 1st respondent, fixed 15% contributory negligence on the part of the deceased for not wearing helmet at the time of accident and directed the respondents to jointly and severally pay a sum of Rs.10,81,596/- as compensation to the appellants.

9.Challenging the portion of the award fixing 15% contributory negligence on the part of the deceased and not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

10.The learned counsel appearing for the appellants contended that the Tribunal erroneously fixed 15% contributory negligence on the part of the deceased. The accident has occurred only due to rash and negligent driving by the rider of the motorcycle and the deceased, who was a pillion rider at the time of accident is no way connected to the accident. There is no proof to show that the deceased as well as the rider of the motorcycle were under the influence of alcohol. The appellants are entitled to entire award amount as compensation. At the time of accident the deceased was aged 43 years, working as Security in Manappuram Gold Finance, Erode and was earning a sum of Rs.15,000/- per month. The appellants proved the avocation and income of the deceased by producing Ex.P6/Bank Account Statement & Ex.P7/Identity Card respectively. But the Tribunal fixed a meagre sum of Rs.8,500/- per month as notional income of the deceased. There are four dependants of the deceased and the Tribunal ought to have deducted 1/4th towards personal expenses of the deceased instead of deducting 1/3rd. The Tribunal failed to award any amount towards loss of love and affection and prayed for setting aside the portion of the award fixing 15% contributory negligence on the part of the deceased and for enhancement of compensation.

11.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the deceased, who was traveling as pillion rider in the motorcycle was not wearing helmet at the time of accident. Hence, 15% contributory negligence fixed on the part of the deceased is proper. The appellants have not produced any material evidence to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, a sum of Rs.8,500/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The compensation awarded by the Tribunal is not meagre and the appellants are not entitled to any amount towards loss of love and affection. The appellants have not made out any case for enhancement of compensation and



prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

13. It is the case of the appellants in the claim petition that the accident has occurred while the deceased Palanisamy was travelling as pillion rider in the motorcycle from Veerakkal to Karumalaikoodal road near Mariannan Kaattu Valaivu, the rider of the motorcycle drove the same in a rash and negligent manner at a high speed without minding the condition of the road. Due to the same, the said Palanisamy who was traveling as pillion rider fell down from the motorcycle and sustained grievous head injuries and died in the Hospital on 01.12.2017. To prove the said contention, the appellants examined the 1st and 3rd appellant as P.W.1 & P.W.3 respectively. P.W.1 & P.W.3 deposed to that of the averments in the claim petition. On the other hand, it is the case of the 2nd respondent-Insurance Company that at the time of accident, the rider of the motorcycle who was in a drunken mood could not able to control the speed of the motorcycle on seeing a tipper lorry which was coming in the opposite direction. Due to the same, the deceased who was riding as pillion rider in said motorcycle, fell into a pipe line which was adjacent to the main road and invited the accident. The 2nd respondent neither examined any witness nor filed any document to prove the said contention. The Tribunal considering the evidence of P.W.1 & P.W.2, held that the accident has occurred only due to rash and negligent driving by the rider of the motorcycle owned by 1st respondent. The Tribunal after holding so, considering Ex.P4/copy of postmortem report held that the said Palanisamy died due to the injuries sustained by him in the head. The Tribunal further held that had the deceased worn helmet at the time of accident, the death could have been averted and also had the rider of the motorcycle drove the motorcycle carefully, the accident could have been avoided. In view of the above, the Tribunal considering the entire materials, held that the deceased also contributed negligence to the accident and fixed 15% contributory negligence on the part of the deceased. The reason given by the Tribunal for fixing 15% contributory negligence on the part of the deceased is proper and hence, the same is not interfered with.

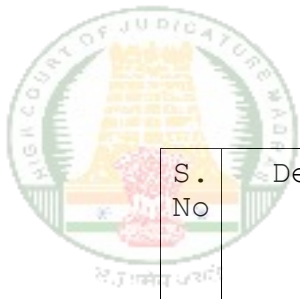
14. As far as quantum of compensation is concerned, it is the case of the appellants that at the time of accident the deceased was aged 43 years, working as Security at Manappuram Gold Finance, Erode and was earning a sum of Rs.15,000/- per month. To prove the avocation and income of the deceased, the appellant produced Ex.P6/Bank Account Statement & Ex.P7/Identity Card of the deceased. The appellants have not filed any salary slip, attendance register or wage register to prove the



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avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, the Tribunal considering the age and nature of work done by the deceased, fixed a sum of Rs.8,500/- per month as notional income of the deceased. The accident occurred in the year 2017. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, considering the age, Ex.P6/Bank Account Statement & Ex.P7/Identity Card, a sum of Rs.10,000/- per month is fixed as notional income of the deceased. The deceased was aged 43 years as per Ex.P7/Identity Card. The Tribunal following the judgments of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] and 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], rightly applied multiplier '14' and granted 25% enhancement towards future prospects. There are four dependants of the deceased and the Tribunal ought to have deducted 1/4th towards personal expenses of the deceased instead of deducting 1/3rd. Thus, by fixing monthly income of the deceased at Rs.10,000/- and deducting 1/4th towards personal expenses, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.15,75,000/- {Rs.12,500/- [Rs.10,000/- + Rs.2,500/- (25% of Rs.10,000/-)] X 12 X 14 X $\frac{3}{4}$ }. The Tribunal failed to award any amount towards transportation. The appellants are entitled to a sum of Rs.10,000/- towards transportation. Considering the age, avocation and income of the deceased, this Court is of the considered view that the amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. 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 dependency	11,90,112/-	15,75,000/-	Enhanced
	85% of loss of dependency	10,11,596/-	13,38,750/-	
2.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Transportation	-	10,000/-	Granted



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
	Total	Rs.10,81,596/-	Rs.14,18,750/-	Enhanced by Rs.3,37,154/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,81,596/- is hereby enhanced to Rs.14,18,750/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally directed to deposit the 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 to the credit of M.C.O.P.No.494 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. On such deposit, the appellants are permitted to withdraw their respective share of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Deputy Registrar (AD II)

//True copy//

Sub Assistant Registrar

krk

To

The Special District Judge,
Motor Accident Claims Tribunal,
Salem.

+1cc to Mr.S.P.Yuaraj, Advocate SR.No.16815

+1cc to Mr.S.Arunkumar, Advocate SR.No.16773

C.M.A.No.719 of 2021

KV(CO)
GMY(20/10/2021)