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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.712 of 2021

1.Sirin Gowsar

2.Nazim

.. Appellants/Claimants

Vs.

1.I.Deepal Subhash Hawale,
A/P.36/1, Tukaram Nagar,
Kharadi, Chandan Nagar,
Pune, Maharastra State - 400 014.

2. The New India Assurance Company Limited,
Divisional Office, Sethu Krishna Trade Centre,
2nd Floor, Trichy Main Road,
Gugai, Salem - 636 006.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.04.2019 made in M.C.O.P.No.120 of 2018 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Salem.

For Appellants : Mr.S.P.Yuaraj

For R2 : Mr.J.Chandran

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 contributory negligence fixed on the part of the deceased as well for enhancement of compensation granted by the Tribunal in the award dated 22.04.2019 made in M.C.O.P.No.120 of



in a moderate speed, he could have controlled the car and the accident would have been avoided. There was no negligence on the part of the driver of the lorry owned by 1st respondent as alleged by the appellants. The said Jaffer Sheriff sustained fatal injuries only due to non wearing of seat belt. Had the deceased worn the seat belt, he would not have suffered fatal injuries. The said Jaffer Sheriff was the driver of the Toyota Fortuner car and the accident occurred during the course of employment and only the employer of the deceased is liable to pay the compensation to the appellants. The owner and insurer of the Toyota Fortuner car driven by the deceased have to be impleaded as necessary parties in the claim petition. The lorry owned by 1st respondent was not having valid Registration Certificate, Fitness Certificate and Permit on the date of accident. The driver of the lorry was not possessing valid driving license at the time of accident. Hence, the 2nd respondent is not liable to pay any compensation to the appellants. The appellants have to prove that they are the legal heirs of the deceased by producing valid documents. 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, one Khaja, eyewitness to the accident was examined as P.W.2 and 10 documents were marked as Exs.P1 to P10. The respondents did not let in any oral and documentary evidence.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that both the driver of the lorry owned by 1st respondent as well as the deceased are responsible for the accident, fixed negligence in the ratio 90 : 10, awarded a sum of Rs.27,90,728/- as compensation to the appellants and directed the respondents to jointly and severally pay a sum of Rs.25,11,656/- being 90% of the award amount as compensation to the appellants.

9. Questioning the portion of the award fixing 10% contributory negligence on the part of the deceased as well for enhancement of compensation in the award dated 22.04.2019 made in M.C.O.P.No.120 of 2018, the appellants have come out with the present appeal.

10. The learned counsel appearing for the appellants contended that the driver of the lorry owned by 1st respondent was not examined and the Tribunal without properly considering the evidence of P.W.2/eyewitness, erroneously fixed 10% contributory negligence on the part of the deceased. The driver of the lorry only over took the car and suddenly came to the



left hand side and dashed against the car and caused the accident. The Tribunal ought to have fixed entire negligence on the part of the driver of the lorry owned by 1st respondent. At the time of accident, the deceased was aged 20 years, working as Driver in VMS Marketing, Suramangalam, Salem and was earning a sum of Rs.20,000/- per month including batta. The notional income fixed by the Tribunal at Rs.13,000/- per month is meagre. The Tribunal ought to have fixed the monthly income of the deceased at Rs.20,000/- per month. The Tribunal failed to award any amount towards transportation and pain and sufferings. The amount awarded by the Tribunal towards loss of love and affection is meagre and prayed for setting aside the portion of the award fixing 10% contributory negligence on the part of the deceased and for enhancement of compensation.

11.Per contra, Mr.J.Chandran, learned counsel appearing for the 2nd respondent contended that the accident occurred only due to the negligent driving by the deceased as he only overtook the lorry on the left side of the road. The Tribunal having held that the accident could have been averted had the deceased drove the car at a moderate speed, ought to have fixed entire negligence on the part of the deceased. The appellants have not proved the avocation and income of the deceased by producing any valid document. In the absence of acceptable evidence, the notional income of the deceased fixed by the Tribunal at Rs.13,000/- per month is excessive. The total compensation awarded by the Tribunal is not meagre 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 available on record.

13.It is the case of the appellants that while the deceased Jaffer Sheriff was driving the Toyota Fortuner car on the left side of the NH 48 road near Panjiganahalli Gate, Sira Taluk, the driver of the lorry bearing Registration No.MH 12 HD 6868 owned by 1st respondent, who was proceeding ahead of the car driven by the deceased in the same direction on the right side of the road, suddenly turned the lorry from right side to left side of the road without any indication or signal and dashed against the Toyota Fortuner car driven by the deceased and caused the accident. In the accident, the deceased Jaffer Sheriff sustained fatal injuries and died on the spot. To substantiate their case, the 1st appellant examined herself as P.W.1 and examined P.W.2/eyewitness to the accident and marked F.I.R., which was registered against the driver of the lorry owned by 1st respondent. On the other hand, it is the case of the respondents that the deceased Jaffer Sheriff only drove the car in a rash



and negligent manner at an uncontrollable speed and over took the lorry owned by 1st respondent on the left side of the road against the Traffic Rules and dashed against the lorry and invited the accident. To substantiate their case, the respondents have not let in any oral and documentary evidence. The Tribunal considering evidence of P.W.2/eyewitness to the accident, the fact that F.I.R. was registered against the driver of the lorry and no contra evidence to the evidence of P.W.2, held that the accident has occurred due to the negligence on the part of the driver of the lorry owned by 1st respondent. Having held so, the Tribunal in the award has further held that the accident could have been averted had the deceased drove the car at a moderate speed and fixed 10% contributory negligence on the part of the deceased. The said finding of the Tribunal for fixing 10% contributory negligence on the part of the deceased is erroneous as there is no evidence to show that the deceased was driving the car in a rash and negligent manner and he also contributed to the accident. The said erroneous finding is liable to be set aside and it is hereby set aside. The appellants are entitled to entire compensation.

14.As far as quantum of compensation is concerned, it is the case of the appellants that the deceased was aged 20 years, working as Driver in VMS Marketing, Suramangalam, Salem and earning a sum of Rs.20,000/- per month including batta. But they did not file any document to prove the said contention. 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.13,000/- 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. Considering the date of accident, a sum of Rs.15,000/- per month is fixed as notional income of the deceased. The deceased was aged 25 years at the time of accident as per Ex.P7/driving license. 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 '18' and granted 40% enhancement towards future prospects. There are two dependants of the deceased and the Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased. Thus, by fixing Rs.15,000/- per month as notional income, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.30,24,000/- {Rs.21,000/- [Rs.15,000/- + Rs.6,000/- (40% of Rs.15,000/-)] X 12 X 18 X 2/3}. The Tribunal has awarded excessive amount of Rs.1,00,000/- to the appellants towards loss of love and affection and the same is modified as the 2nd appellant is entitled to a sum of Rs.40,000/- towards loss of



love and affection. The amounts awarded by the Tribunal towards loss of consortium to 1st appellant, funeral expenses and loss of estate are just and reasonable and hence, the same are hereby confirmed.

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15. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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	26,20,728/-	30,24,000/-	Enhanced
2.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed
3.	Loss of love and affection	1,00,000/-	40,000/-	Reduced
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	Rs.27,90,728/-	Rs.31,34,000/-	Enhanced by Rs.6,22,344/-
	90% of compensation	Rs.25,11,656/-		(Rs.31,34,000/- - Rs.25,11,656/-)

16. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.25,11,656/- is hereby enhanced to Rs.31,34,000/- 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 if any already deposited, 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.120 of 2018 on the file of the Motor Accident Claims Tribunal, II Additional 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. The appellants are directed to pay the necessary Court fee on the enhanced amount of compensation. No costs.

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Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional District Judge,
Motor Accident Claims Tribunal,
Salem.

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

+lcc to Mr.S.P.Yuaraj, Advocate, S.R.No.18949
+lcc to Mr.J.Chandran, Advocate, S.R.No.18744

C.M.A.No.712 of 2021

LN(CO)
CB(07/09/2021)