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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.736 OF 2021

1.Joys Emmima
2.Srimathi
3.Surya
4.Praveen

.. Appellants

Vs.

1. V.Mahendran
2. The Manager,
The New India Assurance Company Limited,
Kumaran Shopping Complex,
Post Box No.47, Kumaran Road,
Tirupur Town and District,
Pin - 641 601.

.. Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.12.2020 made in M.C.O.P.No.615 of 2017, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Erode.

For Appellants : Mr.D.Rameshkumar

For Respondents : M/s.S.R.Sumathy (For R2)

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

This appeal has been filed to set aside the award of the Tribunal dated 01.12.2020 made in M.C.O.P.No.615 of 2017, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Erode.

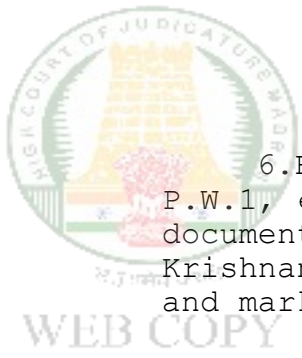


2.The appellants filed M.C.O.P.No.615 of 2017, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Erode, claiming a sum of Rs.30,00,000/- as compensation for the death of one Pradheepan who died in the accident that took place on 06.06.2016.

3.According to the appellants, on the date of accident, when the deceased Pradheepan was riding a Motorcycle bearing Registration No.TN-68-K-2463 on the Coimbatore to Salem NH-47 Main Road, near Chittode Pirivu Road, Aariyas Hotel, from South to North direction, the driver of the Car bearing Registration No.TN-39-BC-4961 owned by the 1st respondent, drove the same in the same direction, without observing the road traffic rules in a rash and negligent manner, without blowing horn and suddenly hit behind the Motorcycle driven by the deceased and caused the accident. In the accident, the said Pradheepan sustained fatal injuries. The accident occurred only due to rash and negligent driving by the driver of the Car. Hence, the appellants filed the said claim petition, claiming compensation against the respondents as owner and insurer of the said offending vehicle respectively.

4.The 1st respondent, owner of the Car, remained exparte before the Tribunal.

5.The 2nd respondent, insurer of the Car, filed counter statement, denying all the averments made by the appellants, including the manner of accident. According to the 2nd respondent, the accident took place in the National Highway i.e., Coimbatore to Salem NH-47. Generally the National Highways roads have service road separately and separate track for two wheelers. The deceased Pradheepan was riding the Motorcycle along with his sister one Srimathi as a pillion rider from South to North direction and without noticing the vehicle coming behind, the deceased suddenly crossed the National Highways Road without following the traffic rules and invited the accident. The accident occurred only due to negligent riding of Motorcycle by the deceased Pradheepan. Hence, the 2nd respondent is not liable to pay any compensation to the appellants. At the time of accident, the deceased Pradheepan did not wear helmet and did not insure the Motorcycle. The appellants have to prove that at the time of accident, the driver of the Car possessed valid driving license to ply the vehicle and the vehicle was insured with the 2nd respondent. The claim petition is bad for non-joinder of driver of the Car. The appellants also have to prove the age, avocation and income of the deceased Pradheepan to claim compensation. In any event, the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.



6. Before the Tribunal, the 1st appellant examined herself as P.W.1, examined 2nd appellant, eye-witness as P.W.2 and marked 21 documents as Exs.P1 to P21. The 2nd respondent examined one Krishnan, Special Sub- Inspector of Police, Chittode as R.W.1 and marked one document as Ex.R1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to negligence of both the deceased as well as the driver of the Car and fixed 50:50 negligence on both of them respectively. The Tribunal awarded a sum of Rs.19,75,869/- and directed the 2nd respondent-Insurance Company to pay a sum of Rs.9,87,935/- being 50% of the award amount, as compensation to the appellants. The Tribunal dismissed the claim petition as against the 4th appellant.

8. Challenging the portion of the award fixing 50% negligence on the part of the deceased as well as not being satisfied with the amounts awarded by the Tribunal in the award dated 01.12.2020 made in M.C.O.P.No.615 of 2017, the appellants have come out with the present appeal.

9. The learned counsel appearing for the appellants contended that the Tribunal erred in fixing contributory negligence on the part of the deceased Pradheepan, when the accident occurred only due to the rash and negligent driving by driver of the Car who hit the Motorcycle driven by the deceased from behind. There is no fault on the part of the deceased. The Tribunal failed to consider Ex.P5 - Final Report submitted by the Police authority which reveals the negligence on the part of the driver of the Car owned by the 1st respondent which caused the accident. Non-possession of driving license by the deceased is not a cause for the accident, as the accident occurred only due to the negligent driving by driver of the Car. The Tribunal erred in deducting 50% towards personal expenses of the deceased citing that the deceased was a Bachelor, instead of deducting 1/3rd considering the fact that there are four dependents of the deceased. At the time of accident, the deceased Pradheepan was pursuing III year Chemical Engineering at J.K.K.Sampooraniammal Polytechnic College and also was doing part time work and he was selected in campus interview for the salary of Rs.30,000/- per month. The Tribunal without considering the educational qualification of the deceased Pradheepan, erroneously fixed only a meagre sum of Rs.12,000/- per month as notional income. The total compensation awarded by the Tribunal is meagre and prayed for setting aside the 50% contributory negligence fixed on the deceased and for enhancement of compensation.



10. The learned counsel appearing for the 2nd respondent-Insurance Company made submissions in support of the award passed by the Tribunal with regard to negligence and contended that the 2nd respondent-Insurance Company examined the Special Sub-Inspector of Police and filed Rough Sketch and proved that the deceased Pradheepan was responsible for the accident. He further submitted that the appellants failed to prove that the deceased was selected in campus interview and was doing part time job. In the absence of any evidence, the Tribunal fixed the monthly income of the deceased Pradheepan at Rs.12,000/-, which is not meagre. The deceased was a Bachelor. The Tribunal rightly deducted 50% towards personal expenses. The appellants have not made out any case for setting aside 50% of the negligence fixed on the deceased as well as for enhancement of compensation and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

12. It is the case of the appellants that while the deceased Pradheepan was riding his Motorcycle with his sister/2nd appellant as pillion rider in Coimbatore to Salem NH-47, Chittodem, the driver of the Car owned by the 1st respondent drove the vehicle without following the traffic rules, in a rash and negligent manner, coming from the same direction, suddenly hit behind the vehicle driven by the deceased and caused the accident. To substantiate this, the appellants examined 1st appellant as P.W.1, 2nd appellant, eye-witness to the accident was examined as P.W.2 and marked FIR which was registered against the driver of the Car as Ex.P1. On the other hand, it is the case of the 2nd respondent that the accident occurred only due to the negligence of the deceased who suddenly crossed the National Highways road without following the traffic rules and invited the accident. The driver of the Car was not responsible for the accident. To substantiate this, the 2nd respondent examined the Special Sub-Inspector of Police as R.W.1 and marked Rough Sketch as Ex.R1. The Tribunal considered the oral and documentary evidence let in by the parties. From the materials let in by the parties, it is seen that the accident occurred while the deceased was crossing the National Highways to go to Chittode. At that time, the driver of the Car dashed on the backside of the Motorcycle and thus, the accident occurred. When a rider of the Motorcycle is crossing the National Highways, before crossing the National Highways, he must see whether any vehicle is coming behind the vehicle. Similarly, the person driving the vehicle in National Highways must see the vehicles going in front of him and must be careful, so as to avoid the



accident. From the materials on record, it is seen that both the deceased as well as the driver of the Car were negligent and contributed equally to the accident. P.W.2 - pillion rider is the eye-witness. But she deposed that she did not know in which track the accident occurred. P.W.2 also admitted that there are separate tracks for fast moving vehicle and Two Wheelers. Considering the evidence of P.W.2 and materials placed before it, the Tribunal held that both the deceased as well as the driver of the Car are equally negligent. The Tribunal has given cogent and valid reason for fixing 50% contributory negligence each on the deceased as well as the driver of the Car. Hence, there is no error in the finding of the Tribunal warranting interference by this Court.

13.As far as the quantum of compensation is concerned, the appellants have claimed that the deceased Pradheepan was aged 21 years and was studying III year Chemical Engineering at J.K.K.Sampooraniammal Polytechnic College and was earning a sum of Rs.12,000/- per month, working as a part time Catering Supervisor. The appellants also contended before the Tribunal that the deceased Pradheepan was selected in campus interview for the salary of Rs.30,000/- per month. The appellants did not file any document to prove that the deceased was selected in the campus interview and a sum of Rs.30,000/- was offered as salary. In the absence of any evidence, the Tribunal accepted the averments in the claim petition and fixed a sum of Rs.12,000/- per month as notional income. The accident is of the year 2016. Considering the year of accident and educational qualification of the deceased Pradheepan, the notional income fixed by the Tribunal is meagre and the same is enhanced to Rs.15,000/- per month. The deceased was a Bachelor at the time of accident. The Tribunal rightly deducted 50% towards personal expenses of the deceased, applied the multiplier '18' and granting 40% enhancement towards future prospects, awarded compensation towards loss of dependency. Hence, fixing the monthly income of the deceased as Rs.15,000/-, granting 40% enhancement towards future prospects, applying multiplier '18' and after deducting 50% towards personal expenses of the deceased, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.22,68,000/- {[Rs.15,000/- + Rs.6,000/- (40% of Rs.15,000/-)] x 12 x 18 x 1/2}. 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:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	18,14,400/-	22,68,000/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Damage to clothes	15,000/-	15,000/-	Confirmed
4.	Loss of filial consortium to appellants 2 and 3	80,000/-	80,000/-	Confirmed
5.	Medical expenses	11,469/-	11,469/-	Confirmed
6.	Parental consortium	40,000/-	40,000/-	Confirmed
	Total compensation	19,75,869/-	24,29,469/-	Enhanced by Rs.2,26,800/-
	50% of the award amount	9,87,934/-	12,14,734/-	(Rs.12,14,734- Rs.9,87,934)

14. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.19,75,869/- is enhanced to Rs.24,29,469/- together with interest at the rate of 9% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit a sum of Rs.12,14,734/-, being 50% of the award amount, now determined by this Court, along with interest and costs, 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.615 of 2017. On such deposit, the appellants 1 to 3 are permitted to withdraw their share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. It is made clear that the appellants are not entitled for any interest for the period dismissed as default viz., from 19.03.2018 to 22.01.2019, as held by the



Tribunal. The appeal is dismissed as against the 4th appellant.
No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Special District Judge,
(Motor Accident Claims Tribunal),
Erode.
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.D.Ramesh Kumar, Advocate, S.R.No.17844

C.M.A.No.736 of 2021

GMI (CO)
PM/22/10/2021