



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.614 of 2020

1.Eswari

2.Saravanan

3.Sumathi

4.Kaveri

.. Appellants/Petitioners

Vs.

1.Subramaniyan

2.The Branch Manager,

United India Insurance Co. Ltd.,

Office Address No.1-A, First Floor, D.M. Building,

Salem Main Road,

Kallakurichi 606 202.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.09.2019, made in M.C.O.P. No.1024 of 2017, on the file of the Special District Court, (Motor Accident Claims Tribunal) Salem.

For Appellants : Mr.K.Suryanarayanan
for M/s.M.Mohamed Riyas

For Respondents: No appearance (For R1)
Mr.A.Dhiraviyanathan (For R2)

J U D G M E N T

This appeal has been filed challenging the negligence fixed on the appellant as well as not being satisfied with the amounts awarded by the Tribunal in the award dated 23.09.2019, made in M.C.O.P. No.1024 of 2017, on the file of the Special District Court, (Motor Accident Claims Tribunal) Salem.

2.The appellants/claimants filed M.C.O.P. No.1024 of 2017, on the file of the Special District Court, (Motor Accident Claims Tribunal) Salem, claiming a sum of Rs.30,00,000/- as compensation for the death of one Chinraj @ Chinnaraj, who died



in the accident that took place on 28.12.2016.

3. According to the appellants, on the date of accident, when the deceased was returning home from Salem old bus stand in his Motorcycle bearing Registration No. TN-52-E-9650 through Salem to Sankari National Highways Road, near Village Foods Hotel, on the extreme left side, in North to South direction, the driver of the Lorry bearing Registration No. TN-32-P-6999 belonging to the 1st respondent came in the same direction, behind the Motorcycle in a rash and negligent manner and dashed against the Motorcycle and caused the accident. In the accident, the deceased succumbed to fatal injuries. The accident occurred only due to rash and negligent driving by driver of the Lorry belonging to the 1st respondent. Hence, the appellants filed the claim petition claiming compensation against the respondents as owner and insurer of the offending vehicle respectively.

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

5. The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellants in the counter statement. According to the 2nd respondent, the alleged accident occurred at night hours on NH 47 four way track. At the time of accident, the deceased suddenly came to the middle of the road without noticing the vehicles on his rear side and came into contact with the left side of the Lorry belonging to the 1st respondent and fell down. The accident occurred only due to evasive riding of the deceased. Besides, the driver of the Lorry drove the vehicle without possessing valid driving license. The deceased was a bachelor and failed to wear helmet at the time of accident. The appellants 2 and 3 who are the elder married brother and sister of the deceased are not dependents of the deceased. The 2nd respondent is not liable to pay compensation to the appellants and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st appellant examined herself as P.W.1, one Sakthivel, eye-witness was examined as P.W.2 and 9 documents were marked as Exs. P1 to P9. The respondents did not let in any oral and documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent driving by driver of the Lorry and fixed 75% negligence on the driver of the 1st respondent vehicle and 25% contributory negligence on the part of the deceased for not possessing valid driving license to ply the vehicle at the time of accident. The Tribunal directed the respondents to jointly



and severally pay a sum of Rs.9,37,200/- being 75% of the award amount, as compensation to the appellants.

8.Challenging the portion of the award fixing 25% contributory negligence on the part of the deceased as well as not being satisfied with the amounts awarded by the Tribunal in the award dated 23.09.2019, made in M.C.O.P. No.1024 of 2017, the appellants have come out with the present appeal.

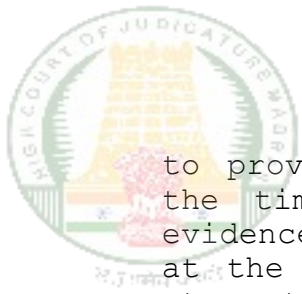
9.The learned counsel appearing for the appellants contended that the Tribunal erred in fixing 25% contributory negligence on the part of the deceased, stating that the deceased did not take steps to file the driving license and concluded that the deceased did not possess driving license at the time of accident. The accident occurred only due to rash and negligent driving by driver of the Lorry belonging to the 1st respondent. The learned counsel appearing for the appellants contended that the Tribunal ought to have fixed the income of the deceased as Rs.15,000/- per month, based on the cost of living that prevailed on the date of accident i.e., 28.12.2016. The Tribunal failed to award any amount towards loss of love and affection to the appellants. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation and for setting aside the negligence fixed on the deceased.

10.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the accident occurred in the middle of the road and deceased while riding the Motorcycle, without noticing the vehicles on his rear side, came into contact with the left side of the Lorry belonging to the 1st respondent and fell down. The accident occurred only due to negligent riding by rider of the deceased, who rode the vehicle without wearing helmet and without possessing valid driving license. The Tribunal considering the same, fixed 25% negligence on the part of the deceased, which is in order. The total compensation granted by the Tribunal is not meagre and prayed for dismissal of the appeal.

11.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

12.Heard through video conference, the learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

13.In the present case, the 2nd respondent-Insurance Company has not examined any official from the Regional Transport Office



to prove that the deceased did not possess driving license at the time of accident. The Tribunal, in the absence of any evidence, erroneously held that the deceased did not wear helmet at the time of accident and the appellants have not taken any steps to produce the driving license of the deceased and fixed contributory negligence on the part of the deceased. In any event, in the judgment of the Hon'ble Apex Court reported in 2018 (1) TN MAC 34 (SC) [Dinesh Kumar, J. @ Dinesh, J. Vs. National Insurance Co. Ltd. and others], it has been held that mere failure to produce driving license is not sufficient to draw adverse inference in respect of contributory negligence and non-production of driving license by claimant is of no consequence and set aside the contributory negligence fixed. The relevant paragraphs of the said judgment reads as follows:

"7.Both the tribunal, and in appeal in the High Court, have found fault with the appellant for not having produced his driving licence. The tribunal noted that the appellant had admitted in the course of his cross-examination that the road where the accident took place was a two way road and that on each side, three vehicles could pass at a time. A suggestion was put to the appellant that while trying to overtake another vehicle, he had approached the offending lorry from the right side as a result of which the accident took place. The appellant denied the suggestion. The award of the tribunal indicates that absolutely no evidence was produced by the insurer to support the plea that there was contributory negligence on the part of the appellant.

8.Insofar as the judgment of the High Court is concerned, the Division Bench has placed a considerable degree of importance on the fact that there was no visible damage to the lorry but that it was the motor cycle which had suffered damage and that there was no eye-witness. We are in agreement with the submission which has been urged on behalf of the appellant that plea of contributory negligence was accepted purely on the basis of conjecture and without any evidence. Once the finding that there was contributory negligence on 1 (2008) 12 SCC 436 the part of the appellant is held to be without any basis, the second aspect which weighed both with the tribunal and the High Court, that the appellant had not produced the driving licence, would be of no relevance. This aspect has been considered in a judgment of this



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Court in Sudhir Kumar (supra) where it was held as follows :

"9.If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence..

10. The matter might have been different if by reason of his rash and negligent driving, the accident had taken place."

The ratio in the said judgment is squarely applicable to the facts of the present case in respect of deceased not possessing driving license and the 25% contributory negligence fixed on the deceased is reduced to 10% for not wearing helmet at the time of accident. The appellants are entitled to 90% of the compensation awarded by the Tribunal.

14.As far as the quantum of compensation is concerned, it is the case of the appellants that the deceased was aged 22 years, working as a Mason and was earning a sum of Rs.15,000/- per month, at the time of accident. They failed to prove the same. In the absence of any materials, the Tribunal fixed the monthly income of the deceased as Rs.8,000/-. The accident is of the year 2016. Considering the year of accident, age and nature of work done by the deceased, a sum of Rs.15,000/- as claimed by the appellants is fixed as notional income of the deceased. The Tribunal considering the age of the deceased, rightly granted 40% enhancement towards future prospects and applied multiplier 18 and deducted 50% towards personal expenses of the deceased, as he was a bachelor at the time of accident. Hence, the amounts 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}. After deducting 10% contributory



negligence fixed on the deceased, the appellants are entitled to a sum of Rs.20,41,200/- [Rs.22,68,000 - Rs.2,26,800] towards loss of dependency. The Tribunal failed to award any amount for loss of love and affection to the appellants. The appellants 1 and 4 being mother and father of the deceased are entitled to a sum of Rs.40,000/- towards loss of love and affection and the appellants 2 and 3 being siblings of the deceased are entitled to a sum of Rs.20,000/- each towards loss of love and affection. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed.

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	9,07,200/-	20,41,200/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Loss of love and affection to the appellants 1 and 4	-	40,000/-	Granted
5.	Loss of love and affection to the appellants 2 & 3	-	40,000/-	Granted
	Total	9,37,200/-	21,51,200/-	Enhanced by Rs.12,44,000/-

16.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.9,37,200/- is enhanced to Rs.21,51,200/-, together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The 2nd respondent-Insurance Company is directed to deposit 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.1024 of 2017. On such deposit, the appellants are permitted to withdraw their share of the award amount, 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. The appellants are directed to pay the necessary court fee on the enhanced award amount. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

gsa

To

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

Copy To

The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.M.Mohammed Riyaz, Advocate, S.R.No. 8564

+1cc to Mr.A.Dhiraviyanathan, Advocate, S.R.No.9112

C.M.A.No.614 of 2020

PVS (CO)

GN(01/10/2021)