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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.687 of 2021

1.Renuka

2.Minor Jeeva

3.Minor Suseela

(Minor appellants 2 and 3 rep. by mother, 1<sup>st</sup> appellant)

4.Gengammal

5.Samannan

.. Appellants/Petitioners

Vs.

1.Santhamani

2.Future General India Insurance Company Limited,

Office Code 42, No.1510,

May Flower Mid City,

2<sup>nd</sup> Floor, Trichy Road,

Coimbatore - 641 018.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.12.2020 made in M.C.O.P. No.1231 of 2018, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Krishnagiri.

For Appellants : Mr.K.Suryanarayanan  
for Mr.M.Mohamed Riyaz

For Respondents : No appearance (For R1)

Mrs.C.Harini (For R2)  
for M/s.M.B.Gopalan Associates



## J U D G M E N T

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

This appeal has been filed challenging the 10% contributory negligence fixed on the deceased and for enhancement of the compensation granted by the Tribunal in the award dated 17.12.2020 made in M.C.O.P. No.1231 of 2018, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Krishnagiri.

2.The appellants/claimants filed M.C.O.P.No.1231 of 2018, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Krishnagiri, claiming a sum of Rs.99,00,000/- as compensation for the death of one Manjunathan who died in the accident that took place on 06.08.2018.

3.According to the appellants, on the date of accident, when the deceased Manjunathan was riding a Motorcycle bearing Registration No.TN-38-AW-5269 from Somanahalli to Kattampatti Pirivu road at Dharmapuri road, the driver of the Bus bearing Registration No.TN-39-AW-2277 owned by the 1<sup>st</sup> respondent drove the same ahead of him in a rash and negligent manner at an uncontrollable speed, without giving any signal and suddenly stopped the Bus. The deceased who did not anticipate the sudden stoppage of Bus, dashed behind the said Bus, fell down and sustained fatal injuries. The accident occurred only due to rash and negligent driving by the driver of the Bus. Hence, the appellants filed the said claim petition, claiming compensation for the death of Manjunathan against the respondents as owner and insurer of the vehicle respectively.

4.The 1<sup>st</sup> respondent, owner of the Bus, remained exparte before the Tribunal.

5.The 2<sup>nd</sup> respondent-Insurance Company filed counter statement and denied all the averments made by the appellants in the claim petition. According to the 2<sup>nd</sup> respondent, on the date of accident, the driver of the Bus owned by the 1<sup>st</sup> respondent drove the same slowly and cautiously, observing all the rules of the road. The deceased Manjunathan while trying to overtake the Bus, hit behind the said Bus and invited the accident. The accident occurred only due to the negligence of the deceased Manjunathan. In any event, the appellants have to prove that the deceased possessed valid driving license to ply the vehicle at the time of accident. The appellants also have to prove the age, avocation and income of the deceased to claim compensation. The total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.



6. Before the Tribunal, 1<sup>st</sup> appellant examined herself as P.W.1, examined one Ramachandran, eye-witness to the accident as P.W.2, one Sathishkumar, Executive Officer, Neuro Foundation Hospital, Salem as P.W.3 and marked 20 documents as Exs.P1 to P20. The respondents did not let in any oral and documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the Bus owned by the 1<sup>st</sup> respondent and fixed 10% contributory negligence on the part of the deceased Manjunathan for driving the vehicle without possessing driving license and awarded a sum of Rs.22,84,600/- as compensation. The Tribunal directed the 2<sup>nd</sup> respondent-Insurance Company to pay a sum of Rs.20,56,140/-, being 90% of the award as compensation to the appellants.

8. Questioning the 10% contributory negligence fixed on the part of the deceased Manjunathan and not being satisfied with the amounts awarded by the Tribunal in the award dated 17.12.2020 made in M.C.O.P. No.1231 of 2018, the appellants have come out with the present appeal.

9. The learned counsel appearing for the appellants contended that the Tribunal erred in fixing 10% contributory negligence on the part of the deceased Manjunathan on the ground that he did not possess valid driving license at the time of accident. The Tribunal failed to note that the intention of the legislation is to grant just compensation to the persons affected by road accident, which was upheld by the various judgments of this Court and the Hon'ble Apex Court. The Tribunal ought to have considered the evidence of P.W.2, eye-witness who specifically deposed about the negligent driving of the driver of the Bus which caused the accident. The Tribunal erred in fixing a meagre sum of Rs.9,000/- per month as notional income of the deceased, without considering the year of accident and age of the deceased. The deceased was aged 36 years at the time of accident. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the appellants are entitled to 40% enhancement towards future prospects. The Tribunal erroneously granted only 25% enhancement towards future prospects. The deceased has undergone treatment for a period of 21 days. The Tribunal failed to award any amount towards pain and suffering, mental agony, transportation, attendant charges, extra nourishment and loss of amenities. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of the compensation.



10. Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company contended that the Tribunal considering the fact that the deceased Manjunathan/rider of the Motorcycle violated the road traffic rules by riding the Motorcycle without possessing valid driving license at the time of accident, rightly fixed 10% contributory negligence on his part. In the absence of any evidence to prove the age, avocation and income of the deceased, the Tribunal fixed a sum of Rs.9,000/- per month as notional income, which is not meagre. The total compensation awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellants as well as the 2<sup>nd</sup> respondent-Insurance Company and perused the materials available on record.

12. From the materials on record, it is seen that the Tribunal considering the oral evidence let in by the appellants and Ex.P1 - FIR, held that the accident occurred only due to rash and negligent driving by driver of the Bus. After holding so, the Tribunal fixed 10% contributory negligence on the deceased Manjunathan on the ground that he did not possess valid driving license to ride the Motorcycle at the time of accident. From the award of the Tribunal, it is seen that there is no material to show that the deceased also contributed to the accident. The 2<sup>nd</sup> respondent has not proved that the accident has occurred only due to rash and negligent driving by the deceased. The Tribunal accepting the evidence of P.W.1 and P.W.2, held that the accident occurred only due to rash and negligent driving by driver of the Bus owned by the 1<sup>st</sup> respondent. 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 when there is a finding that there was no contributory negligence on the part of the deceased, non-production of driving license/insurance policy of the deceased or injured would be of no relevance. The relevant portion of the said judgment is extracted hereunder:

"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



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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 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."

In the present case, the Tribunal held that accident occurred only due to rash and negligent driving by driver of the Bus. When there is no evidence with regard to contributory negligence on the part of the deceased, not possessing driving license has no relevance. The ratio in the judgment referred to above is squarely applicable to the facts of the present case. For the above reason, the 10% contributory negligence fixed on the part of the deceased Manjunathan is liable to be set aside and is hereby set aside.

13.As far as quantum of compensation is concerned, it is the case of the appellants that at the time of accident, the deceased Manjunathan was aged 35 years, working in Zero Mass Private Company and also in Housing Loan Section, State Bank of India, Palacode on deputation and was earning a sum of Rs.40,000/- per month. Except the evidence of P.W.1, wife of the deceased, the appellants did not file any material evidence to prove the same. In the absence of any evidence to prove the

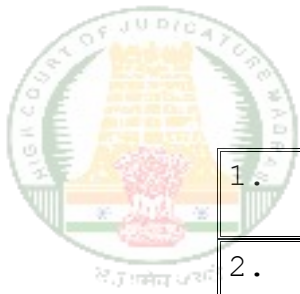


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avocation and income of the deceased, the Tribunal fixed a sum of Rs.9,000/- per month as notional income of the deceased. The accident is of the year 2018. The notional income fixed by the Tribunal is meagre. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, the notional income of the deceased is enhanced to Rs.15,000/- per month. The Tribunal having rightly fixed the age of the deceased as 36 years as per Ex.P7- death certificate and applied the multiplier '15', erroneously granted 25% enhancement towards future prospects of the deceased. Considering the age of the deceased, the appellants are entitled to 40% enhancement towards future prospects of the deceased. The Tribunal considering the fact that there are five dependents of the deceased, rightly deducted 1/4<sup>th</sup> towards personal expenses of the deceased. Thus, fixing the notional income of the deceased at Rs.15,000/- per month, granting 40% enhancement towards future prospects, applying multiplier '18' and after deducting 1/4<sup>th</sup> towards personal expenses of the deceased, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.34,02,000/- {[Rs.15,000/- + Rs.6,000/- (40% of Rs.15,000/-)] x 12 x 18 x 3/4}. The Tribunal has excessively awarded a sum of Rs.1,00,000/- towards loss of consortium to the 1<sup>st</sup> appellant/wife of the deceased. Hence, the same is reduced to Rs.40,000/-. The Tribunal failed to award any amount towards loss of love and affection to the appellants 2 to 5. The appellants 2 and 3 who are the minor children of the deceased are entitled to Rs.40,000/- each towards loss of love and affection and appellants 4 and 5 who are the aged parents of the deceased are entitled to a sum of Rs.20,000/- each towards loss of love and affection. The appellants are not entitled to any amount towards loss of amenities, pain and sufferings, transportation and mental agony. 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.

14.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 |
|-------|-------------|---------------------------------|-----------------------------------|----------------------------------------|
|       |             |                                 |                                   |                                        |



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|    |                                                  |             |             |                            |
|----|--------------------------------------------------|-------------|-------------|----------------------------|
| 1. | Loss of dependency                               | 15,18,750/- | 34,02,000/- | Enhanced                   |
| 2. | Loss of consortium to 1 <sup>st</sup> appellant  | 2,00,000/-  | 40,000/-    | Reduced                    |
| 3. | Loss of estate                                   | 15,000/-    | 15,000/-    | Confirmed                  |
| 4. | Funeral expenses                                 | 15,000/-    | 15,000/-    | Confirmed                  |
| 5. | Loss of love and affection to appellants 2 and 3 | -           | 80,000/-    | Granted                    |
| 6. | Loss of love and affection to appellants 4 and 5 | -           | 40,000/-    | Granted                    |
| 7. | Medical expenses                                 | 5,35,850/-  | 5,35,850/-  | Confirmed                  |
|    | Total                                            | 22,84,600/- | 41,27,850/- | Enhanced by Rs.20,71,710/- |
|    | 90% of the amount awarded                        | 20,56,140/- | -           | (Rs.41,27,850-20,56,140)   |

15. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.20,56,140/- is enhanced to Rs.41,27,850/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2<sup>nd</sup> 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.1231 of 2018. On such deposit, the appellants 1, 4 and 5 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. The shares of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1<sup>st</sup> appellant, mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 and 3. The appellants are directed to pay the necessary court fee on the enhanced award amount. It is made clear that the appellants are not



entitled for any interest on the enhanced award amount of Rs.20,71,710/-, for the default period viz., from 13.12.2019 to 18.09.2020, as held by the Tribunal. No costs.

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Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

gsa

To

1.The Motor Accidents Claims Tribunal,  
The Special District Judge,  
Krishnagiri.

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

+1cc to Mr.M.Mohamed Riyaz, Advocate SR.No.20379

C.M.A.No.687 of 2021

VBM(CO)  
GMY(29/10/2021)