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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.791 of 2020

1. Suppulkashmi
2. Shanthi
3. Viji ... Appellants/Petitioners

Vs

1. Senthil Kumar
2. The Reliance General Insurance Co., Ltd.,
1st Floor, Dhanam Tower, Binny Main Road,
Park Road, Tiruppur, Coimbatore - 641 601.
Branch at 3rd Floor, 408, Perundurai Road,
Erode - 638 011. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P. No.513 of 2017, dated 25.11.2019 on the file of the Motor Accidents Claims Tribunal / Special District Judge, Erode.

For Appellants : Mr.T.S.Arthanareeswaran

For Respondents : Ms.C.Bhuvanasundari for R2

R1 :Notice not ready

J U D G M E N T

The claimants seek enhancement of compensation awarded at Rs.4,95,000/- for the death of one Vadivel, the husband of the 1st claimant and the father of the claimants 2 and 3.

2. The said Vadivel died in a road accident that occurred on 07.05.2017. According to the claimants, the accident occurred due to collision between the two vehicles. While the deceased is said to be driving a Moped bearing Registration No.TN 34 D 1760, the offending vehicle TVS Excel belonging to the 1st respondent was driven by the driver in the rash and negligent



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manner, dashed against him and as a result of the accident, he suffered head injury which resulted in his death. The claimants who sought for compensation of a sum of Rs.25 lakhs contending that the deceased was earning Rs.21,000/- per month as a gold smith.

3. The claim was resisted by the Insurance Company contending that the deceased did not have a valid driving licence and the fact that he is driving two wheeler without licence having been admitted, the deceased had himself contributed to the accident. It was also contended that the driver of the offending vehicle bearing Registration No.TN 34 U 5904 was not negligent. The quantum of compensation claimed was termed as excessive.

4. The Tribunal upon consideration of the evidence on record, concluded that the driver of the offending vehicle bearing Registration No.TN 34 U 5904 is responsible for the accident and held that the Insurance Company is liable to pay compensation. On the quantum of compensation, the learned Tribunal rejected the evidence of CW4 regarding the income of the deceased. In the absence of any other evidence, the Tribunal took the notional income of the deceased at Rs.9,000/- per month and had deducted 1/3rd towards personal expenses. The Tribunal took loss of dependency at Rs.6,000/-. The Tribunal arrived at yearly dependency at Rs.72,000/- and applied multiplier of 5, and fixed Rs.3,60,000/- towards loss of income. The Tribunal also awarded a sum of Rs.15,000/- towards funeral expenses, Rs.40,000/- towards loss of consortium, Rs.15,000/- towards damage to clothing and properties, Rs.50,000/- towards loss of love and affection and Rs.15,000/- towards medical expenses. Total award of the Tribunal came to Rs.4,95,000/-. Terming the compensation awarded by the Tribunal as meagre, the claimants have come up with this Civil Miscellaneous Appeal.

5. Mr.T.S.Arthanareeswaran, learned counsel appearing for the appellants/claimants would vehemently contend that the Tribunal erred in fixing the monthly income at Rs.9,000/- per month and the Tribunal erred in rejecting the evidence of CW4.

6. Contending contra, Ms.C.Bhuvanasundari, learned counsel appearing for the Insurance Company would submit that the fact that the deceased was riding a two wheeler without licence is admitted and therefore, the Tribunal should have held him guilty of Contributory negligence.



7. Though I see considerable force in the contention of the learned counsel appearing for the Insurance Company, since the Tribunal has taken the income at Rs.9,000/- when the deceased was aged 67 years at the time of accident, I am unable to fault the Tribunal. The compensation awarded on the other heads is also very reasonable and it does not require any interference. I do not see any ground to interfere with the award of the Tribunal. The appeal therefore fails and it is accordingly dismissed. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

vum
To

1. The Special District Judge,
Motor Accidents Claims Tribunal /
Erode.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.

CMA No.791 of 2020

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srg 30/12/2021