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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.815 of 2021

1.Shafina Bee

2.V.R.Mohammed Ibrahim

.. Appellants/Petitioners

Vs.

1. ChinnappaSekar

2. United India Insurance Company Limited,
Silingi Building, New No.134,
Old No.40-45, Greams Road,
Chennai - 600 006.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.02.2020, made in M.C.O.P. No.6438 of 2018, on the file of the Chief Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mrs.Ramya V.Rao
for M/s.A.N.Viswanatha Rao

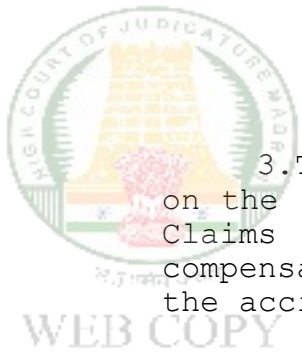
For Respondents : Mr.S.Arunkumar (For R2)

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 10.02.2020, made in M.C.O.P. No.6438 of 2018, on the file of the Chief Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai.

2.By consent of the learned counsel appearing for the appellants as well as the 2nd respondent, the appeal is taken up for final disposal at the admission stage itself.



3.The appellants/claimants, filed M.C.O.P.No.6438 of 2018, on the file of the Chief Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai, claiming a sum of Rs.25,00,000/- as compensation for the death of Syed Sadhik Ibrahim who died in the accident that took place on 12.09.2017.

4.According to the appellants, on the date of accident, when the deceased Syed Sadhik Ibrahim was riding a Motorcycle bearing Registration No.TN-11-H-9796 on the Kundrathur to Kumananchavadi road, near Kumananchavadi, S.S.Hyderabad Biriyan and fast food Shop, from South to North direction, the driver of the Lorry bearing Registration No.AP-26-TD-4617 owned by the 1st respondent drove the same in a rash and negligent manner and dashed against the Motorcycle driven by the deceased Syed Sadhik Ibrahim and caused the accident. In the accident, the said Syed Sadhik Ibrahim sustained fatal injuries. The accident occurred only due to rash and negligent driving by the driver of the Lorry. Hence, the appellants filed the said claim petition, claiming compensation for the death of Syed Sadhik Ibrahim against the respondents as owner and insurer of the vehicle respectively.

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

6.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellants in the claim petition. According to the 2nd respondent, on the date of accident, three persons traveled in the Motorcycle, the deceased Syed Sadhik Ibrahim did not possess valid driving license to ply the vehicle and violated the Motor Vehicle Act and contributed to the accident. Hence, for such violation, the 2nd respondent-Insurance Company is not liable to pay compensation to the appellants. In any event, the appellants 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.

7.Before the Tribunal, 1st appellant examined herself as P.W.1, examined one Abhiyur Rehman, eye-witness to the accident as P.W.2 and marked 10 documents as Exs.P1 to P10. The 2nd respondent examined one K.Harinath, Special Sub-Inspector of Police, Poonamallee Traffic Investigation Wing as R.W.1, 2nd appellant as R.W.2 and marked one document as Ex.R1.



8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the Lorry owned by the 1st respondent and fixed 10% contributory negligence on the part of the deceased Syed Sadhik Ibrahim for driving the vehicle without possessing driving license and awarded a sum of Rs.15,23,000/- as compensation. The Tribunal directed the 2nd respondent-Insurance Company to pay a sum of Rs.13,70,700/-, being 90% of the award as compensation to the appellants.

9.Questioning the 10% contributory negligence fixed on the part of the deceased Syed Sadhik Ibrahim and not being satisfied with the amounts awarded by the Tribunal in the award dated 10.02.2020, made in M.C.O.P. No.6438 of 2018, the appellants have come out with the present appeal.

10.The learned counsel appearing for the appellants contended that the Tribunal erred in fixing 10% contributory negligence on the part of the deceased Syed Sadhik Ibrahim 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 by the driver of the Lorry 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 Tribunal has awarded only meagre amounts towards loss of love and affection. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of the compensation.

11.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the fact that the deceased Syed Sadhik Ibrahim/rider of the Motorcycle violated the road traffic rules by not possessing valid driving license to ride the Motorcycle, rightly fixed 10% contributory negligence on his part. The Tribunal considering the 10th marksheet of the deceased who was a student at the time of accident and year of accident, rightly 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.



12. Heard the learned counsel appearing for the appellants as well as the 2nd respondent-Insurance Company and perused the materials available on record.

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13. From the materials on record, it is seen that the Tribunal considering the oral evidence let in by the appellants, Ex.P1 - FIR and Ex.R1 - MVI report, held that the accident occurred only due to rash and negligent driving by driver of the Lorry. After holding so, the Tribunal fixed 10% contributory negligence on the deceased Syed Sadhik Ibrahim 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 2nd 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 Lorry owned by the 1st 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 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 :



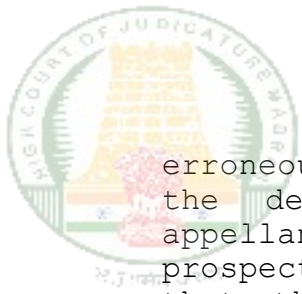
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"9.If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini 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 Lorry. 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 Syed Sadhik Ibrahim is liable to be set aside and is hereby set aside.

14.As far as quantum of compensation is concerned, it is the case of the appellants that at the time of accident, the deceased Syed Sadhik Ibrahim was aged 18 years, studying XII Standard in Urudhu College, Kanchi District. The Tribunal considering Ex.P6 - 10th standard mark sheet of the deceased and year of accident, fixed a sum of Rs.9,000/- per month as notional income of the deceased. The accident is of the year 2017. The notional income fixed by the Tribunal is meagre. Had the deceased been alive, after completing studies, he would have got good job with decent salary. Hence, the notional income of the deceased is enhanced to Rs.13,000/- per month. The Tribunal



erroneously granted 50% enhancement towards future prospects of the deceased. Considering the age of the deceased, the appellants are entitled to only 40% enhancement towards future prospects of the deceased. The Tribunal considering the fact that the deceased was a Bachelor at the time of accident, rightly deducted 50% towards personal expenses of the deceased and applied multiplier '18'. Thus, fixing the the notional income of the deceased at Rs.13,000/- per month, 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.19,65,600/- {[Rs.13,000/- + Rs.5,200/- (40% of Rs.13,000/-)] x 12 x 18 x 50%}. The amount of Rs.25,000/- each awarded by the Tribunal towards loss of love and affection to the appellants who are the parents of the deceased are meagre and hence, the same are enhanced to Rs.40,000/- each. The Tribunal failed to award any amount towards loss of estate to the appellants. Hence, a sum of Rs.15,000/- is awarded towards loss of estate. This Court is of the considered view that the amount awarded by the Tribunal towards funeral expenses is just and reasonable and hence, the same is hereby confirmed. 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	14,58,000/-	19,65,600/-	Enhanced
2.	Loss of love and affection	50,000/-	80,000/-	Enhanced
3.	Loss of estate	-	15,000/-	Granted
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	15,23,000/-	20,75,600/-	Enhanced by Rs.7,04,900/-
	90% of the amount awarded	13,70,700/-	-	(Rs.20,75,600 - 13,70,700)

15. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.13,70,700/- is enhanced to



Rs.20,75,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the award amount, now determined by this Court i.e., Rs.20,75,600/-, 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.6438 of 2018. On such deposit, the appellants 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. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Motor Accident Claims Tribunal,
Chief Judge, Court of Small Causes,
Chennai.
2. The Section Officer,
V.R Section,
High Court, Madras.

+2CCs to Mr.A.N.Viswanatha Rao, Advocate, Sr.No.20644

+1CC to Mr.S.Arunkumar, Advocate, Sr.No.20340

C.M.A. No.815 of 2021

VBM (CO)
K.RK. (29.07.2021)