



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1263 of 2021

1.Lakshmi

2.Madhu

.. Appellants/Petitioners

Vs.

Pavunraj (died)

1.United India Insurance Company Limited,
Issuing Office: 77, Oriental Complex,
A.A.Street, Salem - 636 001.
Branch Office : Shanmuga Complex,
New Edappadi Salai, Sankari - 637 301.

2.Pappa

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.10.2020 made in M.C.O.P. No.28 of 2016, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Sankari.

For Appellants : Mr.T.S.Arthanareeswaran
for Mr.C.Paraneedharan

For Respondents : M/s.I.Malar (For R1)

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 16.10.2020 made in M.C.O.P. No.28 of 2016, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Sankari.

2.By consent of the learned counsel appearing for the appellants as well as the 1st respondent, the appeal is taken up for final disposal at the admission stage itself.



WEB COPY

3.The appellants/claimants filed M.C.O.P.No.28 of 2016, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Sankari, claiming a sum of Rs.25,00,000/- as compensation for the death of one Ramesh @ Ravi who died in the accident that took place on 29.10.2015.

4.According to the appellants, on the date of accident, when the deceased Ramesh @ Ravi was traveling as a pillion rider in a Motorcycle bearing Registration No.TN-54-D-5089 driven by one Paunraj from Namakkal - Salem Road, near the bridge opposite to Keeranur Vetri Vikas Girls Higher Secondary School, the said Paunraj drove the vehicle in a rash and negligent manner and dashed on the centre median of the National Highways and caused the accident. In the accident, both the Paunraj/rider-cum-owner as well as Rajesh @ Ravi/pillion rider of the Motorcycle sustained fatal injuries. The accident occurred only due to rash and negligent riding by Paunraj/rider-cum-owner of the Motorcycle. Hence, the appellants filed the said claim petition, claiming compensation for the death of one Rajesh @ Ravi against the said Paunraj and 1st respondent-Insurance Company as rider-cum-owner and insurer of the Motorcycle respectively. Since the said Paunraj died in the accident, the 2nd respondent herein/wife of the said Paunraj was impleaded as 3rd respondent in the claim petition.

5.The 1st respondent-Insurance Company filed counter statement and denied all the averments made by the appellants in the claim petition. According to the 1st respondent, at the time of accident, the rider of the Motorcycle drove the vehicle under the influence of alcohol and violated the policy condition. When the said Paunraj/rider of the Motorcycle died on the same day of accident, the claim petition filed impleading the said Paunraj as 1st respondent is not maintainable. The learned counsel for the appellants has also filed a claim petition in M.C.O.P.No.48 of 2016 on the file of the Sub Court, Sankari claiming compensation for the death of said Paunraj. 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.

6.The 2nd respondent, wife of the owner of the Motorcycle, remained exparte before the Tribunal.



WEB.COM

7. Before the Tribunal, the 2nd appellant examined herself as P.W.1, one Shanmugam, co-employer of the deceased Rajesh @ Ravi as P.W.2, one Kadhivel as P.W.3 and marked 9 documents as Exs.P1 to P9. The respondents did not let in any oral and documentary evidence.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent riding by rider of the Motorcycle owned by the husband of the 2nd respondent and fixed 15% negligence on the part of the deceased Rajesh @ Ravi for not wearing helmet at the time of accident and awarded a sum of Rs.11,04,000/- as compensation to the appellants. The Tribunal directed the respondents to jointly and severally pay a sum of Rs.9,40,000/- being 85% of the award amount as compensation to the appellants.

9. Questioning the 15% contributory negligence fixed on the deceased and not being satisfied with the amounts awarded by the Tribunal in the award dated 16.10.2020 made in M.C.O.P. No.28 of 2016, the appellants have come out with the present appeal.

10. The learned counsel appearing for the appellants contended that the Tribunal erred in fixing 15% contributory negligence on the part of the deceased Rajesh @ Ravi on the ground that he did not wear helmet at the time of accident. At the time of accident, the deceased Rajesh @ Ravi was aged 26 years, working as an Assistant Supervisor in Dyeing Section, ALC Looms Mills, Erumapalayam and was earning a sum of Rs.20,000/- per month. Due to the injuries sustained in the accident, he was admitted in Government Mohan Kumaramangalam Medical College Hospital, Salem and died on the same day. The deceased was the sole bread winner of the family and hence, the appellants are struggling very much to meet their day-to-day expenses. The amounts awarded by the Tribunal towards loss of dependency, loss of love and affection and loss of consortium are meagre. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of the compensation and setting aside the 15% contributory negligence fixed on the deceased.

11. Per contra, the learned counsel appearing for the 1st respondent-Insurance Company contended that the Tribunal considering the fact that the deceased Rajesh @ Ravi/pillion



WEB COPY
rider and rider of the Motorcycle violated the road traffic rules by not wearing helmet at the time of accident, rightly fixed 15% contributory negligence on their part. In the absence of any documentary evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.7,500/- 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 1st respondent-Insurance Company and perused the materials available on record.

13. From the materials on record, it is seen that the Tribunal considering the oral evidence let in by the appellants and manner of accident as alleged in the Ex.P1 - FIR registered against the rider of the Motorcycle, rightly held that the accident occurred only due to rash and negligent riding by rider of the Motorcycle. After holding so, the Tribunal following the judgment of this Court reported in 2018 ACJ 110 [Branch Manager, Oriental Insurance Company Limited Vs. Indirani and others], fixed 15% contributory negligence on the deceased Rajesh @ Ravi/pillion rider of the Motorcycle on the ground that he did not wear helmet at the time of accident. The Tribunal directed the 1st respondent being insurer of the Motorcycle to pay 85% of the amount awarded. There is no error in the said finding of the Tribunal warranting interference by this Court.

14. As far as quantum of compensation is concerned, it is the case of the appellants that at the time of accident, the deceased Rajesh @ Ravi was a Bachelor aged 26 years, working as Assistant Supervisor in Dyeing Section at ALC Looms Mills, Erumapalayam, Salem and earning a sum of Rs.20,000/- per month. P.W.1/father and P.W.2, co-worker of the deceased deposed to that effect. The appellants did not file any material evidence to prove the same. In the absence of any evidence, the Tribunal fixed a sum of Rs.7,500/- per month as notional income of the deceased and granted 40% enhancement towards future prospects. The accident is of the year 2015. The monthly income fixed by the Tribunal is meagre. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, a sum of Rs.14,000/- per month is fixed as notional income of the deceased Rajesh @ Ravi. The Tribunal



considering the age of the deceased, rightly applied the multiplier '17' and deducted 50% towards personal expenses of the deceased. Hence, fixing the monthly income at Rs.14,000/-, granting 40% enhancement towards future prospects, applying multiplier '17' and after deducting 50% towards personal expenses of the deceased, the amount awarded by the Tribunal towards loss of dependency is enhanced to Rs.19,99,200/- $\{[Rs.14,000/- + Rs.5,600/- (40\% \text{ of } Rs.14,000/-)] \times 12 \times 17 \times \frac{1}{2}\}$. The Tribunal failed to award any amount towards loss of love and affection. The appellants who are the parents of the deceased are entitled to a sum of Rs.40,000/- each towards loss of love and affection. The Tribunal has excessively awarded a sum of Rs.16,500/- each towards funeral expenses and loss of estate and hence, the same are hereby reduced to Rs.15,000/- each.

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	10,71,000/-	19,99,200/-	Enhanced
2.	Funeral expenses	16,500/-	15,000/-	Reduced
3.	Loss of love and affection	-	80,000/-	Granted
4.	Loss of estate	16,500/-	15,000/-	Reduced
	Total	11,04,000/-	21,09,200/-	Enhanced by Rs.8,53,000/- (Rs.17,93,000 -
	85% of the award amount	9,38,400/- rounded off to 9,40,000/-	17,92,820/- rounded off to 17,93,000/-	Rs.9,40,000)



16. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.11,04,000/- is enhanced to Rs.21,09,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally directed to deposit a sum of Rs.17,93,000/-, being 85% of the award amount, now determined by this Court, along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.28 of 2016. 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, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellants are directed to pay necessary court fee on the enhanced award amount. No costs.

Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

gsa

To

1. The Subordinate Judge,
(Motor Accidents Claims Tribunal),
Sankari.

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

+2CCs to Mr.T.S.Arthanareeswaran, Advocate, SR.No.21646
+1CC to M/s.T.Ravichandran, Advocate, SR.No.21477

C.M.A.No.1263 of 2021

JP(CO)
B.VC (21/09/2021)