



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A. No.1076 of 2020

1.V.Uma
W/o.C.Velmurugan

2.C.Velmurugan
S/o.Chandrakasan

...Appellants/Petitioner

Vs.

1.V.Vijayarangan
S/o.Veeraragavan(set apart before the Tribunal)

2.The Divisional Manager,
The New India Assurance Co.Ltd.,
DO No.30, JN Street, Puducherry - 1.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree dated 10.02.2020 made in M.C.O.P. No.2210 of 2015 on the file of Motor Accident Claims Tribunal, Principal District Judge, Cuddalore.

For Appellants : M/s.Ramya V.Rao

For R2 : Mr.J.Michael Visuvasam

JUDGMENT

(Order of the Court was made by SATHI KUMAR SUKUMARA KURUP,J.)

The Civil Miscellaneous Appeal is filed by the appellants seeking enhancement of compensation granted by the Tribunal in the award dated 10.02.2020 made in M.C.O.P. No.2210 of 2015 on the file of Motor Accident Claims Tribunal, Principal District Court, Cuddalore.



2.The appellants are claimants in M.C.O.P. No.2210 of 2015 on the file of Motor Accident Claims Tribunal, Principal District Court, Cuddalore. The appellants filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of their son viz., Vignesh, who died in the accident that took place on 08.02.2015.

3.Facts of the Case:-

According to the appellants, on 08.02.2015 at about 19.30 hours, the deceased Vignesh travelled as a Pillion rider in the TVS Star City Motorcycle bearing registration No.TN-01-Z-6075, which was driven its rider at a moderate speed, keeping extreme left of OMR Road, from Mamallapuram to Chennai, opposite to PBEL City Apartment. At that time, the 1st respondent's Tourister Van bearing registration No.TN-19-D-0631 came from behind, at a great speed, in a rash and negligent manner, without making horn, without following the rules and regulations and dashed against the deceased motorcycle and caused the accident. Due to the said accident, the deceased thrown out of the motorcycle and sustained fatal injuries. Immediately he was taken to Chettinad Hospital, Chennai where he was declared dead. The accident occurred only due to rash and negligent driving by driver of the Tourister Van belonging to the 1st respondent. A case was registered against the driver of the 1st respondent's Tourister Van. Hence, they claimed a sum of Rs.50,00,000/- as compensation.

4.The 2nd respondent/Insurance Company filed statement of objection and denied all the averments made by the appellants. As per F.I.R, three persons are travelled in the motorcycle at the time of accident, place of accident sketch clearly mentioned the accident place was center portion of the tar road. As per police sketch clearly mentioned the 1st respondent's vehicle driver was driven the vehicle with due care and diligence and caution and followed the traffic rules and regulations at that time three persons had travelled including the deceased, in rash and negligent manner and unbalanced driving and not followed the traffic rules and regulations and suddenly crossing the road and invited the accident. There were three persons including the deceased travelled in the motorcycle at the time of accident and it is sheer breach of policy conditions and also the provisions of M.V. Act. Hence, claim petition is liable to be dismissed for non-joinder of necessary parties.

5.The 1st respondent was called absent and set ex-parte before the Tribunal.

6.Before the Tribunal, the 1st appellant/mother of the deceased examined herself as P.W.1, and examined one more



witness as P.W.2 and marked Ex.P1 to P12. The 2nd respondent examined one Jayalakshmi as R.W.1 and marked Ex.R1.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tourister Van belonging to the 1st respondent and fixed 20% contributory negligence on the part of the deceased for travelling of 3 persons in a motor cycle and awarded a sum of Rs.12,33,000/- as compensation and directed the 2nd respondent Insurance Company to pay a sum of Rs.12,33,000/- as compensation to the appellants at the first instance and recover the same from the 1st respondent.

8.Challenging the portion of the award fixing 20% contributory negligence on the part of the deceased and for enhancement of compensation, the appellants have come out with the present appeal.

9.M/s.Ramya V.Rao, learned counsel appearing for the appellants contended that the deceased was aged 19 years at the time of accident and was studying 2nd year B.Tech (Aeronautical Engineering) at Hindustan University. The notional income fixed by the Tribunal is very meagre. The Tribunal has not awarded any amount towards Transportation Expenses and loss of Love and Affection. The amounts awarded by the Tribunal under different heads are also meagre and hence prayed for enhancement of compensation.

10.Per contra, Mr.J.Michael Visuvasam, learned counsel appearing for the 2nd respondent/Insurance Company contended that the deceased was a student and a non-earning member. The appellants have failed to prove that the deceased would have got salary more than Rs.10,000/- per month. The notional income fixed by the Tribunal is not meagre. The amounts awarded by the Tribunal are just compensation and appellants have not made out any case for setting aside the negligence fixed on the part of the deceased and for enhancement of compensation and prayed for dismissal of the appeal.

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

12.From the evidence available on record, it is seen that the accident occurred only due to rash and negligent driving by the driver of the 1st respondent's van. After having held so, the Tribunal erroneously fixed 20% contributory negligence on the part of the deceased on the ground that there are three persons travelled in a motorcycle in violation of statutory



provision. In a two wheeler only two persons can travel. If more than two persons travel in violation of rules, this Court had held that they were made contributed negligence for the accident. The Division Bench of this Court held that when three persons travelled in a two wheeler, the rider of the two wheeler is cramped so much and he has no full control over the bike and in certain cases he is almost sitting on the petrol tank of the bike. Whether a plea of contributory negligence is taken and proved or not, when more than two persons traveled in a two wheeler, they are automatically liable for contributory negligence and 20% of contributory negligence is fixed. Applying the said principle, admittedly, in this case, three persons including the deceased had travelled and no doubt, 20% contributory negligence can be attributed. However, since the deceased happened to be a pillion rider among three persons travelled in the bike, this Court is of the considered view that 10% of the contributory negligence for the accident can be attributed against the deceased. In view of the same, the 2nd respondent/Insurance Company is liable to pay 90% of the award amount as compensation to the appellants. The deceased Vignesh travelled in the motorcycle as a pillion rider only, hence 20% negligence fixed by the Tribunal on the part of the deceased is excessive. Considering the materials available on record in its entirety, this Court fixes 10% contributory negligence on the part of the deceased and 90% contributory negligence on the part of the driver of the Tourister van belonging to the 1st respondent.

13.As far as quantum of compensation is concerned, the appellants have contended that the deceased was studying 2nd year B.Tech (Aeronautical Engineering) at Hindustan University, at the time of accident. This Court is inclined to fix notional income of the deceased at Rs.15,000/- per month instead of Rs.10,000/- per month fixed by the Tribunal. The deceased was aged 19 years at the time of accident. The Tribunal has awarded 40% enhancement towards future prospects which is proper. Since the deceased was a Bachelor, aged 19 years at the time of accident, the Tribunal applied the multiplier '18' and deducted 1/2 towards personal expenses of the deceased. In view of the same, the amount awarded by the Tribunal towards loss of dependency is enhanced to Rs.22,68,000/- [(Rs.15,000/- + 6,000 (Rs.15,000/ x 40%) x 12 x 18 x 1/2)]. The Tribunal has not awarded any amount towards loss of love & affection and Transportation charges. The appellants who have lost their son, at young age, are entitled to a sum of Rs.40,000/- each towards loss of love & affection and Rs.10,000/- is granted towards Transportation charges respectively. The Tribunal has awarded a sum of Rs.30,000/- towards conventional heads like loss of



Estate and Funeral Expenses and the same is confirmed by this Court. 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	15,12,000	22,68,000	Enhanced
2.	Loss of love & affection	-	80,000	Granted
3.	Loss of Estate and Funeral expenses	30,000	30,000	Confirmed
4.	Transportation charges	-	10,000	Granted
	Total Award	Rs.15,42,000/-	Rs.23,88,000/-	
		80% of the award amount comes to Rs.12,33,600/- (Rounded off to Rs.12,33,000/-) payable by Insurance Company and 20% of the award amount comes to Rs.3,09,000/- towards contributory negligence	90% of the award amount comes to Rs.21,49,200/- payable by Insurance Company and 10% of the award amount comes to Rs.2,38,800/- towards contributory negligence	

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,33,000/- is hereby enhanced to Rs.21,49,200/- together with interest at the rate of 8% per annum from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced



compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the 1st respondent. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gbi

To

1. The Motor Accident Claims Tribunal,
The Principal District Judge,
Cuddalore.

Copy to

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

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.6979
+1cc to Mr.A.N.Viswanathan, Advocate, S.R.No.7289

C.M.A. No. 1076 of 2020

PP[co]
NSK 04/08/2021