IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Miscellaneous Appeal No.2636 of 2021

1. Aswathamma

2. Rajappa ...Petitioners/ Appellants

Vs.

1. S.Thangaraj

2. The Branch Manager,
National Insurance Co., Ltd.,
Branch Office, No.88F,
Byepass Road, Dharmapuri 636 701. ... Respondents / Respondents

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award and enhance the compensation amount made in judgment and decree dated 01.04.2021 made in MCOP. No.63 of 2020 on the file of the Motor Accident Claims Tribunal and Special District Court for MACT case, Krishnagiri.

For Appellants : Mr. S.P.Yuaraj
For Respondents : Mr. M.Krishnamoorthy, for R2
No appearance for R1

J U D G M E N T

The claimants, who have been favoured with an award for a sum of Rs.12,79,456/- for the death of their daughter Ms.Ramya, in a motor accident that occurred on 02.04.2019 are the appellants.

2. According to the claimants, the deceased was employed as a Twin Coil Assembler in M/s.Duracon Precision, Hosur. She was drawing a monthly salary of Rs.20,000/-. Terming the rash and negligent driving on the part of the lorry bearing Registration No.TN-24-C-7069, as the cause for the accident and

the death of their daughter, the claimants sought for a compensation of Rs.50,00,000/-. Though the claimants assessed the pecuniary loss at Rs.1,16,81,000/-, they restricted their claim to Rs.50,00,000/-.

3. The claim was resisted by the Insurance Company contending that the driver of the lorry did not have an effective driving license. The rider of the two wheeler on which the deceased was travelling as a pillion rider also did not have a valid driving license. The rider of the two wheeler on which the deceased was a pillion rider also contributed to the accident.

4. At trial, the first petitioner was examined as P.W.1, one Komala, who was an eye witness, was examined as P.W.2, and one Emily Lydia was examined as P.W.3. Exhibits P1 to P15 were marked. One Mr.Santhosh, a the Junior Assistant in the office of the Road Transport Officer, Krishnagiri, was examined as R.W.1 and Exhibits R1 and R2 were marked.

5. The Tribunal on a consideration of the evidence concluded that there was no evidence to show negligence on the part of the rider of the two-wheeler. The Tribunal, however, faulted the claimants for not producing the license of the rider of the two-wheeler and held that 20% of the compensation has to be deducted for such non-production. The Tribunal took the monthly income at Rs.9,849/-, as evidenced by Ex.C15 added 40% towards future prospects, deducted 50% towards personal expenses, the deceased being a spinster, applied a multiplier of 18 and arrived at the total loss of dependency at Rs.14,89,320/-. The Tribunal awarded a sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and Rs.80,000/- towards loss of consortium, thus the total award came to Rs.15,99,320/-. After deducting 20% of the compensation for non-production of license, the Tribunal directed the Insurance Company to pay a sum of Rs.12,79,456/-. The Insurance Company has accepted the award as granted by the Tribunal. The claimants are before this Court seeking enhancement.

6. I have heard Mr.S.P.Yuaraj, learned counsel appearing for the appellants and Mr.M.Krishnamoorthy, learned counsel appearing for the respondent/Insurance Company.

7. Mr.S.P.Yuaraj, learned counsel appearing for the appellants would vehemently contend that the Tribunal was not right in deducting 20% solely on the ground the license of the rider of the two-wheeler was not produced. Having come to the

conclusion that there is no evidence of any negligence on the part of the two-wheeler rider, the Tribunal ought not to have deducted 20% of the compensation. The learned counsel would further contend that the Tribunal erred in taking Rs.9,849/- as the salary and Ex.P15 itself shows that the claimant was paid Rs.5,834.00 for the last 15 days and the hike was due to increase in the dearness allowance. On the above contentions, the learned counsel would seek enhancement of the compensation.

8. Contending contra Mr.M.Krishnamoorthy, learned counsel appearing for the respondent would submit that this Court in National Insurance Co. Ltd., v. Thangadurai and others, reported in 2018 (2) TANMAC 168, had held that a direction of 20% for non-production of license is just and reasonable. He would also contend that the Tribunal was right in taking the monthly salary at Rs.9,849/- and the overall compensation is just and reasonable.

9. Mr.S.P.Yuaraj, learned counsel appearing for the appellants would draw my attention to the judgment of the Hon’ble Supreme Court in Dinesh Kumar J. @ Dinesh J. vs. National Insurance Co. Ltd and others, reported in 2018 (1) TANMAC 34, to contend that mere non-production of license cannot lead to a presumption of contributory negligence. He would also point out that there must be evidence for negligence.

10. I have considered the rival submissions.

11. A perusal of the salary certificate namely Ex.P15 would show that the deceased was paid a sum of Rs.5,834/- as salary for the last 15 days, she had drawn. For the earlier 30 days she was paid Rs.9,849/-, the increase in the subsequent period is due to the increase of the Dearness allowance. Therefore, I do not think it will be improper for the Court to take the last drawn salary namely, Rs.5,834/- as the basis for arriving at the compensation. If Rs.5,834/- is taken as the basis, the monthly salary would be Rs.11,668/-, adding 40% towards future prospects, the monthly income would be at Rs.16,335/-. Since the deceased was a spinster, 50% has to be deducted towards personal expenses, thus the monthly loss of dependency would be Rs.8,167.50. The total loss of dependency would be

Rs.8,167.50 x 12x 18 = Rs.17,64,180.00

The award of the Tribunal in respect of loss of estate at Rs.15,000/-, Funeral expenses at Rs.15,000/- and Loss of consortium at Rs.80,000/- are confirmed. Therefore the total compensation comes to Rs.18,74,180/-.

12. In fact the Tribunal had adverted to the question of contributory negligence, and come to the conclusion that there was no evidence of negligence on the part of the rider of the two-wheeler. However, the Tribunal has chosen to deduct 20% for the mere non-production of the license.

13. As rightly contended by Mr.S.P.Yuaraj, learned counsel appearing for the appellants, the mere non-production of license cannot lead to a presumption of negligence. But however, in the light of the evidence that is available, particularly the cross-examination of P.W.1, wherein, it has been suggested to him that the rider of the motor cycle did not have a license, I am of the opinion that 10% deduction can be made towards non-production of license. If 10% is deducted from Rs.18,74,180/-, the total compensation would be Rs.16,86,762/-

14. In view of the above, the appeal is partly allowed, the compensation granted by the Tribunal is enhanced to Rs.16,86,762 /-. The Insurance Company is granted 6 weeks time to deposit the enhanced compensation with appropriate interest as granted by the Tribunal to the credit of MCOP No. 63 of 2020. There shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

jv

To

1. The Special District Judge,
   Motor Vehicle Accident Claims Tribunal,
   Krishnagiri.

2. The Section Officer,
   V.R.Section,
   High Court of Madras.

+1cc to Mr.S.P.Yuaraj, Advocate SR.No.64070

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SR(CO)
CB(19/01/2022)