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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.3014 of 2019
and
Cross Objection No.45 of 2019

C.M.A. No.3014 of 2019

1.Suseela

2.Ranganathan

..Appellants/Petitioners

Vs.

1. R.P.Sekar

2. The Oriental Insurance Co. Ltd.,

146, 1st Floor, Kumar Complex,

West Car Street, Tiruchengode Town and Taluk,

Namakkal District.

Branch Office: 1st Floor,

Ponnusamy Gounder Complex,

Tiruchengode Road,

Sankari 637 301.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.04.2019, made in M.C.O.P. No.36 of 2016, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankari.

For Appellants : Mr.T.S.Arthanareeswaran
for M/s.C.Paraneedharan

For Respondents: Mr.J.Chandran (For R2)

Cross Objection No.45 of 2019

The Oriental Insurance Co. Ltd.,

146, 1st Floor, Kumar Complex, West Car Street,

Tiruchengode Town and Taluk, Namakkal District.

Branch Office: 1st Floor, Ponnusamy Gounder Complex,

Tiruchengode Road, Sankari 637 301.

..Cross Objector

Vs.

1.Suseela

2.Ranganathan

3.R.P.Sekar

..Respondents



Prayer: This Cross Objection is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 15.04.2019, made in M.C.O.P. No.36 of 2016, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankari.

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For Cross Objector : Mr.J.Chandran

For R1 & R2 : Mr.T.S.Arthanareeswaran
for M/s.C.Paraneedharan

C O M M O N J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants challenging the negligence fixed and for enhancement of the compensation granted by the Tribunal in the award dated 15.04.2019, made in M.C.O.P. No.36 of 2016, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankari.

Cross Objection No.45 of 2019 has been filed by the 2nd respondent-Insurance Company to set aside the award dated 15.04.2019, made in M.C.O.P. No.36 of 2016, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankari.

2.The appellants/claimants filed M.C.O.P. No.36 of 2016, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankari, claiming a sum of Rs.25,00,000/- as compensation for the death of one Manikandan who died in the accident that took place on 31.10.2015.

3.According to the appellants, on the date of accident, while the deceased Manikandan was riding a TVS 50 Motorcycle bearing Registration No.TN-28-W-9752 from East-West in Namakkal to Tiruchengode Road, near Unjanai, carefully on the left side of the road, the driver of a HGV Goods vehicle bearing Registration No.KA-01-9789 belonging to the 1st respondent negligently parked the vehicle on road without any signal and hit against the Motorcycle rode by the deceased and caused the accident. In the accident, the deceased Manikandan succumbed to fatal injuries. Hence, the appellants filed the said claim petition claiming compensation against the respondents as owner and insurer of the offending vehicle respectively.

4.The 1st respondent remained exparte before the Tribunal.

5.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, the accident occurred only due to rash and negligent riding of Motorcycle by the deceased Manikandan who rode the vehicle without following



the traffic rules and regulations and hit against the parked Goods Vehicle belonging to the 1st respondent, fell down and sustained injuries. A false complaint was given by the father of the deceased before the Trichencode Rural Police on 01.11.2015 and without proper enquiry, the Police registered a false case against the driver of the Goods Vehicle. The appellants colluded with the 1st respondent and filed the present claim petition. In any event, the deceased rode the Motorcycle without wearing helmet and without possessing valid driving license. For violation of policy conditions, the 2nd respondent is not liable to pay any compensation to the appellants. The appellants have to prove the age, avocation and income of the deceased to claim compensation and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st appellant examined herself as P.W.1, examined eyewitness as P.W.2, employer of deceased as P.W.3 and marked 11 documents as Exs.P1 to P11. The respondents did not examine any witness, but marked ration card of the deceased as Ex.R1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent driving by driver of the Goods Vehicle and fixed 90% negligence on the driver of the 1st respondent vehicle and 10% contributory negligence on the part of the deceased for not possessing valid driving license to ply the vehicle at the time of accident and awarded a sum of Rs.31,65,000/- as compensation. The Tribunal directed the 2nd respondent-Insurance Company to pay a sum of Rs.28,50,000/- being 90% of the award amount, as compensation to the appellants.

8. Challenging the portion of the award fixing 10% contributory negligence on the part of the deceased as well as not being satisfied with the amounts awarded by the Tribunal in the award dated 15.04.2019, made in M.C.O.P. No.36 of 2016, the appellants have come out with the present appeal.

9. To set aside the said award of the Tribunal, the 2nd respondent-Insurance Company has filed Cross-Objection No.45 of 2019.

10. The learned counsel appearing for the appellants contended that the Tribunal having rightly held that the accident occurred only due to rash and negligent driving by driver of the Goods Vehicle belonging to the 1st respondent, erred in fixing 10% contributory negligence on the part of the deceased on the ground that the deceased did not possess driving license at the time of accident. The learned counsel appearing for the appellants further contended that at the time of



accident, the deceased was aged 21 years, working as a Painter and was earning a sum of Rs.20,000/- per month. The appellants lost their son who was the sole bread winner of the family. The compensation granted by the Tribunal under different heads are meagre and prayed for enhancement of compensation and for setting aside the negligence fixed on the deceased.

11.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company/Cross Objector contended that the accident occurred only due to the negligent riding of Motorcycle by the deceased, who rode the vehicle without wearing helmet and without possessing valid driving license and dashed on the 1st respondent's parked vehicle. The Tribunal ought to have fixed 50% contributory negligence on the part of the deceased, instead of fixing 10%. The Tribunal without considering the admission of P.W.3, co-worker of the deceased that there is no proof of Painting job, erroneously fixed a sum of Rs.800/- per day and Rs.20,000/- per month as notional income of the deceased. The total compensation awarded by the Tribunal for the deceased person who was a bachelor, aged 21 years is excessive and prayed for dismissal of the appeal and setting aside the award of the Tribunal.

12.Heard the learned counsel appearing for the appellants through video conference as well as the 2nd respondent and perused the materials available on record.

13.In the present case, the 2nd respondent-Insurance Company has not let in official from the Regional Transport Office to prove that the deceased did not possess driving license at the time of accident. The Tribunal, in the absence of any evidence in support of the case of the 2nd respondent, erroneously held that the deceased did not possess valid driving license at the time of accident and fixed contributory negligence on the part of the deceased. In any event, 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 mere failure to produce driving license is not sufficient to draw adverse inference in respect of contributory negligence and non-production of driving license by the claimant is of no consequence and set aside the contributory negligence fixed. The relevant paragraphs of the said judgment reads as follows:

"7.Both the tribunal, and in appeal in the High Court, have found fault with the appellant for not having produced his driving licence. The tribunal noted that the appellant had admitted in the course of his cross-examination that the road where the accident took place was a two way road



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and that on each side, three vehicles could pass at a time. A suggestion was put to the appellant that while trying to overtake another vehicle, he had approached the offending lorry from the right side as a result of which the accident took place. The appellant denied the suggestion. The award of the tribunal indicates that absolutely no evidence was produced by the insurer to support the plea that there was contributory negligence on the part of the appellant.

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 :

"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."

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The ratio in the said judgment is squarely applicable to the facts of the present case in respect of deceased not possessing driving license and the 10% contributory negligence fixed on the deceased is liable to be set aside and is hereby set aside. The appellants are entitled to entire compensation awarded by the Tribunal.

14. As far as the quantum of compensation is concerned, the appellants who are the parents of the deceased claimed that the deceased was aged 21 years, working as a Painter and was earning a sum of Rs.20,000/- per month, at the time of accident. They failed to prove the same. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal erroneously fixed the notional income of the deceased as Rs.20,000/- per month, as claimed by the appellants. Considering the entire materials, the monthly income fixed by the Tribunal is reduced and fixed at Rs.15,000/-. The Tribunal considering the age of the deceased, rightly granted 40% enhancement towards future prospects and applied multiplier '18' and deducted $\frac{1}{2}$ towards personal expenses of the deceased, as he was a bachelor at the time of accident. Hence, by reducing the monthly income to Rs.15,000/-, the amounts granted by the Tribunal towards future prospects is modified as Rs.22,68,000/- $\{[Rs.15,000/- + Rs.6,000/- (40\% \text{ of } Rs.15,000/-)] \times 12 \times 18 \times \frac{1}{2}\}$. The Tribunal has granted a sum of Rs.1,00,000/- towards loss of love and affection to the appellants. The same is excessive and hence, reduced to Rs.40,000/- each. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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.	Future prospects	30,25,000/-	22,68,000/-	Reduced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Loss of love and affection	1,00,000/-	80,000/-	Reduced
5.	Transportation charges	10,000/-	10,000/-	Confirmed



Total	31,65,000/-	23,88,000/-	Reduced by
90% of the award amount	28,48,500/- rounded off to 28,50,000/-	-	Rs.4,62,000/- (28,50,000 - 23,88,000)

15. In the result, both the appeal and Cross Objection are partly allowed and the amount awarded by the Tribunal at Rs.28,50,000/- is modified to Rs.23,88,000/-, 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, 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. 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(CS-IX)

//True Copy//

Sub Assistant Registrar

gsa

To
Motor Accident Claims Tribunal,
The Subordinate Judge
Sankari.

Copy To :

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.10684

C.M.A. No.3014 of 2019
and Cross Objection No.45 of 2019

RGN(CO)
RGA(16/11/2021)