IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.2748 of 2021

1.Karuppaye
2.Kuppu
3.Kalaiarasi
4.Elumalai ... Appellants

Vs

1.Thendral

2.Reliance General Insurance Company Limited,
No.6, Haddows Road,
Motor T.P.Hub, Nungambakkam,
Chennai-600 006. ... Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.04.2021 and made in M.A.C.T.O.P. No.1082 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellants : Ms.A.Subadra

For Respondents : Mrs.C.Bhuvanasundari (for R2)
R1 - Notice dispensed with vide order dated 12.11.2021

J U D G M E N T

The claimants, who were favoured with an award for a sum of Rs.12,37,600/- for the death of one Murugan in a motor accident that occurred on 31.12.2018, are on appeal terming the compensation as meagre.

2.It is the case of the claimants that the said Murugan was a B.Sc., B.Ed. graduate and was working as a Cashier in New Saravana Sweets and Bakery, situated at No.12, Avadi Road, Karayanchavadi, Poonamallee. He was earning a sum of Rs.18,000/-

per month. Contending that as a result of the accident, the first claimant mother of the deceased had lost financial support and the claimants 2 to 4, who are the sisters and brother of the deceased, who were also dependent on him, had also lost their only breadwinner. Claiming taht the negligence on the part of the driver of the offending vehicle, which was insured with the second respondent Insurance Company, was the cause for the accident the claimants sought for a compensation of Rs.25,00,000/-.

3.The said claim petition was resisted by the Insurance Company contending that there was no negligence on the part of the driver of the two wheeler bearing registration No.TN12-W-5005, which was insured with the second respondent Insurance Company and the deceased by not wearing a helmet had contributed to the accident. It was also claimed that the owner and the insurer of the vehicle, in which the deceased was travelling as a pillion rider bearing Registration No.TN20-BM-2626, are also necessary parties to the claim petition. The qualification and earnings were also disputed. In proof of the accident, the claimants had examined PW2 Kannaiyan, who was an eye witness to the accident. PW1 is the mother of the deceased and PW3 is the employer. Neither oral nor documentary evidence was let in by the Insurance Company or the owner of the vehicle. The owner of the offending vehicle namely, registration No.TN12-W-5005, remained exparte. The Insurance Company took permission of the Tribunal under Section 170 of the Motor Vehicles Act to take the defences that are available to the insurer.

4.The Tribunal on the assessment of the evidence held that the rider of the motor cycle bearing Registration No.TN12-W-5005 was responsible for the accident. The Tribunal relied upon the FIR which was registered under Sections 279, 337 and 338 of IPC in Crime No.5 against the rider of the motor cycle bearing Registration No.TN12-W-5005. The Tribunal also held that the rider of the motor cycle in which the deceased was travelling as a pillion rider would have contributed to the accident and fixed the contributory negligence at 20% on the rider of the motor cycle bearing Registration No.TN20-BM-2626. The Tribunal disbelieved the evidence of PW3 and took the monthly income at Rs.10,000/-, added 40% towards future prospects, deducted 50% towards personal expenses, the deceased being a bachelor, arrived at the total loss of dependency at Rs.15,12,000/- adopting a multiplier of 18. The Tribunal also awarded a sum of Rs.15,000/- towards funeral expenses and Rs.20,000/- towards loss of love and affection. In all, the Tribunal arrived at the compensation of Rs.15,47,000/- deducting 20% towards contributory negligence. The

Tribunal awarded a sum of Rs.12,37,600/-.

5.Challenging the quantum, Ms.A.Subadra, learned counsel appearing for the appellants would vehemently contend that the Tribunal was not right in fixing the monthly income at Rs.10,000/- for the accident that occurred on 31.12.2018. She would point out that a Division Bench of this Court in M.Mohammed Azharudin vs. M.Rafee reported in 2021 (1) TNMAC 800 (DB) had taken the monthly notional income at Rs.18,000/- for an accident that had occurred in the year 2013. She would also point out in the case that the deceased was 19 years old Engineering student.

6.The learned counsel would submit that the Tribunal erred in not accepting the evidence of PW3. According to her, in the absence of contra evidence, the evidence of PW3 should have been accepted and the monthly income should have been taken at Rs.18,000/-.

7.Faulting the Tribunal for deducting 20% towards contributory negligence, Ms.A.Subadra would point out that there is total lack of evidence on the side of Insurance Company regarding the contributory negligence. She would also draw my attention to the evidence of PW2, the eye-witness, particularly, the cross examination to contend that there is not even a suggestion regarding contributory negligence.

8.Contending contra, Mrs.C.Bhuvanasundari, learned counsel appearing for the Insurance Company would submit that the Tribunal was right in disbelieving the evidence of PW3, as PW3 was not able to produce any document in support of his version. The only document that was produced to show that PW3 is running a business was Ex.P19, a certificate issued by the Legal Metrology Department regarding the correctness of the weights and measures used by New Saravana Sweets and Bakery. That by itself, according to the learned counsel, would not afford any support to the claim that the deceased was being paid a sum of Rs.18,000/- per month. Supporting the findings of the Tribunal on contributory negligence, the learned counsel would submit that the deceased was not wearing the helmet and therefore, PW2 had stated that he has not seen the accident and heard the noise and then only saw the vehicles had collaided. Therefore, according to the learned counsel, the Tribunal was right in assuming that there was a possibility of there being some contribution of the rider of the two wheeler bearing Registration No.TN20-BM-2626.

9. I have considered the rival submissions.

10. On the monthly income, I am unable to accept the findings of the Tribunal in fixing the monthly income at Rs.10,000/- for an accident that had occurred in December 2018. Even if we take the wages that was paid to the NMR employees in the State's PWD, it was around Rs.600/- per day during the relevant time. Giving certain allowance for leave and absence, the monthly income could be safely taken at Rs.15,000/-, the qualification of the deceased namely, B.Sc. B.Ed., is also taken into account in fixing the monthly notional income at Rs.15,000/-. If the monthly notional income is taken at Rs.15,000/- and 40% is add towards future prospects, the total monthly income would be Rs.21,000/-, deducting 50% for a personal expenses,the deceased being a bachelor, the monthly loss of dependency would be Rs.10,500/-. Applying the multiplier of 18 the total loss of dependency would be Rs.22,68,000/-. The Tribunal has awarded a sum of Rs.15,000/- towards funeral expenses and Rs.20,000/- towards loss of love and affection. The first petitioner, who is a mother would be entitled for a sum of Rs.40,000/- towards loss of love and affection. Therefore, a sum of Rs.40,000/- is awarded towards loss of love and affection. The total compensation workouts to Rs.23,23,000/-.

11. On the deduction of 20%, I find considerable force in the argument of the learned counsel for the appellants. There is no evidence on the side of the Insurance Company to show that the rider of the two wheeler bearing registration No.TN20-BM-2626 was negligent or careless and it was his negligence or carelessness that contributed to the accident. PW2 has specifically deposed that it is the rider of the two wheeler bearing registration No.TN12-W-5005, who was riding in a rash and negligent manner and dashed against the other vehicle. The FIR has also been lodged against him. PW2 has also deposed that he has deposed before the Criminal Court also. His evidence has not been diluted in any manner in cross examination.

12. I do not find any suggestion to him to the effect that the rider of the two wheeler in which the deceased was travelling as a pillion rider was negligent and it was his negligence that caused the accident. The Tribunal had decided on contributory negligence purely on assumptions. I am unable to endorse the said procedure adopted by the Tribunal. If the Insurance company wants to take the plea of contributory negligence, it is for the Insurance Company to let in evidence on contributory evidence. The Insurance Company cannot seek the Tribunal to fix contributory negligence on assumptions without letting in any evidence. Therefore, the deduction of 20% towards contributory negligence in my opinion is liable to be set aside.

13.I fine, the Civil Miscellaneous Appeal stands allowed. The compensation is enhanced to Rs.23,23,000/-. The interest awarded by the Tribunal is confirmed. The deduction of 20% towards contributory negligence is set aside.

14. The first claimant would be entitled to the entire compensation along with 7.5% interest and costs. The Insurance Company is required to deposit the enhanced compensation, less the amount already deposited to the credit of MCOP.No.1082 of 2019, within a period of six weeks from the date of receipt of a copy of this order and on such deposit, the first claimant is entitled to withdraw the entire amount. The direction for deposit made by the Tribunal is also set aside. No costs.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

vs

To

1.The Motor Accident Claims Tribunal,
Chief Judge, Court of Small Causes,
Chennai.

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

+1cc to M/s.M.Malar, Advocate SR.No.3663

CMA No.2748 of 2021

AK-II(CO)
CB(23/02/2022)