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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2022

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.2966 of 2021
and CMP.Nos.16907/2021, 2508, 2514, 2519 and 2466 of 2022

M/s.IFFCO-TOKIO General
Insurance Company Limited,
Customer Service Centre,
'Iffco Bhavan',
No.128, Habibullah Road,
T-Nagar,
Chennai 600 017.

...Appellant/2nd Respondent

Vs.

1. Kumari
2. Minor. Viswapriya
3. Minor. Harish
4. Minor. Devashree

[All the minors are rep. by their mother
and next friend Kumari]

5. Neelavathy

6. Devaraj ... 1-6 Respondents/1-6 Petitioners

7. Moorthy ...7th Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree dated 09.11.2020 passed in MCOP.No.3011 of 2016, by the Motor Accidents Claims Tribunal, (Special Sub Court -II, for MCOP Cases - Court of Small Causes), Chennai.

For appellants : Mr.J.Michael Visuvasam

For respondents
for RR1 to 6 : Mr.V.Parivallal

for R7 : No Appearance



J U D G M E N T

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J]

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This appeal has been filed by the Insurance Company questioning the award passed by the Motor Accidents Claims Tribunal, (Special Sub Court -II for MCOP Cases, Court of Small Causes), Chennai in MCOP.No.3011 of 2016.

2. It is a case of fatal accident. According to the claimants, on 16.03.2016, the deceased was riding a motorcycle bearing Registration No.TN-09-BQ-4830 from Timiri to Arcot. At that time, the Lorry bearing Registration No.TN-27-U-0759, which was going ahead of the deceased in a rash and negligent manner, suddenly stopped without signal, hence, he dashed against the Lorry and sustained fatal injuries.

3. The defence of the appellant before the Tribunal was that the deceased was the tort-feasor, hence, no amount can be awarded in favour of the claimants.

4. After analysing the entire evidence, the Tribunal, having found that the deceased was in an inebriated condition at the time of the accident, and he was also not wearing helmet, fixed negligence as 20% on the part of the deceased, while fixing 80% negligence on the driver of the Lorry. The income of the deceased at Rs.17,983/- was fixed based on the salary slips, which were marked as Exs.P17 and 27. The claimants examined Junior Assistant from the Transport Corporation to show that the deceased worked as a temporary employee in the Transport Corporation, through him Ex.P27 was marked.

5. The grievance of the appellant/Insurance Company before this Court is that as the appellant has proved that the deceased had consumed alcohol and he was responsible for the accident, negligence fixed by the Tribunal is to be modified as 50% on the part of the deceased. The next grievance is that though the deceased was a temporary employee in the Transport Corporation, the Tribunal instead of adding 25% towards future prospects, added 30%, which is on the higher side.

6. On the side of the claimants, placing reliance on the decision reported in Manikandan vs. P. Palani and others reported in 2020 (1) TN MAC 449 (DB), it is argued that mere consumption of alcohol cannot be taken as a ground to fix negligence on the part of the deceased. Even if he was found consumed alcohol, only 10% negligence can be fixed on the part of the deceased.



7. We have gone through the materials available on record and considered the submissions made by the learned counsels on both side.

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8. With regard to the argument of the learned counsel appearing for the appellant that more negligence has to be fixed on the deceased, we are unable to accept the said contention, for the reason that the sketch marked as Ex.R2 and the evidence of PW2, show that the driver of the Lorry was the main cause for the accident. Therefore, we do not interfere on the finding of the negligence and 80% negligence fixed on the driver of the Lorry, is hereby confirmed.

9. With regard to quantum, in the instant case, as rightly pointed out by the learned counsel appearing for the Insurance Company, PW3 had clearly admitted in his evidence that the deceased was a temporary employee in the Transport Corporation, hence, the Tribunal ought to have added 25% towards future prospects. Since the claimants proved the salary of the deceased as Rs.17,983/-, it is taken as Rs.18,000/- and adding 25% towards future prospects, the total income comes to Rs.22,500/- [18,000 + 4,500]. From which, 1/4 is deducted for his personal expenses and the balance amount would be Rs.16,875/- [22,500 - 5,625]. Then, by applying proper multiplier 14, the Loss of Dependency is arrived as Rs.28,35,000/- [16,875 x 12 x 14].

10. Considering the fact that the claimants are 6 in number, we hereby confirm the award passed by the Tribunal for Rs.2,40,000/- towards Consortium, Filial Consortium and Parental Consortium. Ex.P15 was filed to show that the claimants had spent Rs.63,363/- towards Medical Expenses, and the said amount awarded by the Tribunal is confirmed. In addition to that, Rs.15,000/- awarded for Loss of Estate and another Rs.15,000/- towards Funeral Expenses, are also confirmed. Thus, the total amount is arrived at Rs.31,68,363/-. Since 20% negligence is fixed on the part of the deceased, the claimant is entitled to Rs.25,34,690/- [31,68,363 - 6,33,673] along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Thus, the claimants are entitled for a compensation of Rs.25,34,691/-, which is rounded off to Rs.25,35,000/-, along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:



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S. No.	Heads under which the amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Loss of Dependency	31,21,665	28,35,000
2.	Loss of Consortium	40,000	40,000
3.	Loss of Estate	15,000	15,000
4.	Funeral Expenses	15,000	15,000
5.	Loss of Parental Consortium	1,20,000	1,20,000
6.	Loss of Filial Consortium	80,000	80,000
7.	Medical Expenses	63,363	63,363
	Total	34,55,028	31,68,363
	Less: 20% toward negligence	6,91,006	633,673
	Compensation awarded to the claimants	27,64,022 rounded off to 27,64,100	25,34,690 rounded off to 25,35,000

11. In fine, the sum of Rs.27,64,100/- awarded by the Tribunal is reduced to Rs.25,35,000/-. Out of the award amount, the first claimant is entitled to Rs.9,35,000/-; claimants 2 to 4 are entitled to Rs.4,00,000/- each; and claimants 5 and 6 are entitled to Rs.2,00,000/-. The Insurance Company is directed to deposit the above modified award amount to the credit of the claim petition with proportionate 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. On such deposit, the major claimants are permitted to withdraw the award amount as apportioned above, less the amount already withdrawn, if any, together with proportionate interest and costs. Insofar as the minor claimants are concerned, their shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Banks and it shall be renewed periodically till they attain majority and the interest accrued thereon shall be withdrawn by the first claimant/mother once in three months.

12. With the above directions, the appeal is partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar



pvs

To

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1. The Motor Accidents Claims Tribunal,
Special Sub Judge-II, Court of Small Causes, Chennai

Copy To

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

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.19388

+2cc to M/s.V.Parivallal, Advocate, S.R.No.19082,19372

C.M.A. No.2966 of 2021

SSN(CO)
SB(23/05/2022)