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C.M.A.No.3318 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2022

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN**

C.M.A.No.3318 of 2021

and

C.M.P.No.18870 of 2021

Reliance General Ins. Co. Ltd.,
Sakthi Supermarket, III Floor,
No.408, Perundurai Road,
Erode – 638 011, Erode Taluk,
Erode district.

... Appellant

Vs.

1.R.Navinkumar

2.D.Navinkumar

3.B.Nishanth

... Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 29th March 2021



C.M.A.No.3318 of 2021

passed in M.C.O.P.No.708 of 2018, by the Motor Accident Claims Tribunal,

Special Subordinate Judge Court at Erode.

For Appellant : Mr.C.Bhuvanasundari

For Respondents : Mr.M.Guruprasad for R1
R2 & R3 – Notice not ready.

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

(Judgment of the Court was delivered by SUNDER MOHAN,J.)

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed in M.C.O.P.No.708 of 2018 dated 29.03.2021 on the file of Motor Accident Claims Tribunal, Special Subordinate Court, Erode aggrieved by the finding on negligence and the quantum of compensation awarded by the Tribunal.

2.The First Respondent filed a Claim Petition in M.C.O.P.No.708 of 2018 on the file of the Motor Accident Claims Tribunal stating that on 03.08.2018 at about 02.30 PM, he was travelling as a pillion rider in the motor cycle, bearing Registration No.TN-86 B-0919 in Modakkurichi to Avalpoondurai road. The second respondent rode the said motor cycle in a rash and negligent manner and



C.M.A.No.3318 of 2021

dashed against a road side palm tree near Kalar Kadu. As a result of the said accident, the First Respondent and the Second Respondent suffered grievous injuries. The First Respondent, therefore, claimed a compensation of Rs.3,00,00,000/-, against the third Respondent, owner of the motorcycle and the appellant / insurer of the motor cycle.

3.The Second and Third Respondents remained exparte before the tribunal.

4.The Appellant filed a counter statement stating that the Second Respondent / rider of the vehicle did not possess a valid driving license. Since there were two pillion riders, there was no insurance coverage for them. The appellant filed additional counter stating that as per Section 128 of the Motor Vehicles Act, 1988, no rider of a two wheeler motorcycle shall carry more than one person in addition to himself on the motor cycle; The premium received is only for one pillion rider. Three persons who travelled in the motor cycle were under the influence of alcohol and they were not wearing helmet at the time of accident. Hence the Appellant / insurance company submitted that they are not liable to pay compensation and sought for dismissal of the claim petition.



C.M.A.No.3318 of 2021

5.Before the tribunal, the First Respondent examined eleven witnesses viz., PW1 to PW11 and marked 47 exhibits viz., Ex.P.1 to Ex.P.47. The Appellant examined three witnesses viz., RW1 to RW3 and marked Ex.R.1 to Ex.R.8.

6.The tribunal after considering the pleadings, oral and documentary evidence held that the evidence disclosed that the accident took place on account of the rash and negligent riding of the rider of the vehicle. The Tribunal found that the first respondent is entitled to a compensation of Rs.50,69,000/-. The Tribunal passed a common Judgment in the claim petitions filed by the first respondent and another pillion rider. The Tribunal found that the Appellant need not pay compensation in respect of the second pillion rider and in respect of the first respondent fixed 20% contributory negligence and directed the appellant to pay Rs.40,56,000/-. Since the rider of the two wheeler did not possess a valid driving license, the Tribunal directed the appellant to pay the compensation to the 1st respondent at the first instance and recover from the second and third respondents herein. Against the said order, the appellant has preferred the above appeal.



C.M.A.No.3318 of 2021

7.The learned counsel for the appellant submitted that the finding of the Tribunal on negligence is erroneous. The learned counsel submitted that admittedly, in the two wheeler that was involved in the accident, there were two pillion riders and the first respondent herein is one of the pillion riders. Therefore, the learned counsel submitted that since the rider of the two wheeler and the pillion riders have violated the terms of the policy and also contributed to the accident by riding triples, the first respondent is also liable for contributory negligence. The learned counsel further submitted that in any event, the income fixed by the Tribunal is not justified. The first respondent has not established that he was employed and he was an earning member. The Tribunal also committed an error in granting 50% towards future prospects and in awarding an interest of 9% per annum towards interest payable on the compensation awarded by the Tribunal.

8.The learned counsel for the first respondent submitted that the nature of the accident and the evidence adduced on behalf of the parties would show that the accident had not taken place on account of the triples riding. The accident had been caused by the rash and negligent driving of the two wheeler and it was not caused due to the triples riding. The learned counsel relied upon the judgment of



C.M.A.No.3318 of 2021

the Hon'ble Apex Court in *Mohammed Siddique and another vs. National Insurance Company Limited and others* reported in “(2020) 3 Supreme Court Cases 57”. The learned counsel therefore submitted that unless there is a clear evidence to show that the accident had been caused because of the triples riding, the Court cannot hold that the accident was on account of the triples riding which may be a violation of the traffic rules. The learned counsel fairly submitted that the future prospects adopted by the Tribunal at 50% may be erroneous and it must be taken at 40% in view of the judgment of the Hon'ble Apex Court in *National Insurance Company Limited vs. Pranay Sethi* reported in [(2017) 16 SCC 680].

9.We have heard the learned Counsels and perused the oral and documentary evidence and pleadings on record.

10.We find that the Tribunal had elaborately considered the question as to whether the accident took place due to the rash and negligent riding of the rider of the two wheeler or is it because of the triples riding. The Tribunal after considering the evidence of P.W.5, the eye-witness to the occurrence, had held that it was the negligent riding of the rider of the two wheeler which was the cause of



C.M.A.No.3318 of 2021

the accident. The Tribunal also found that out of the two pillion riders, only one pillion rider is entitled to compensation payable by the appellant. The Tribunal found that the first respondent being the first pillion rider is entitled to the said compensation payable by the appellant. The Tribunal found that since the first respondent did not wear the helmet, the first respondent is liable for contributory negligence and fixed it at 20%. We find that the finding on negligence and fixing contributory negligence of 20% on the first respondent is justified and there is no reason to interfere in the said finding of the Tribunal.

11.As regards quantum, we find that the Tribunal had rejected the salary certificate marked by the first respondent on the ground that the 1st respondent has not proved his avocation and income. Since the accident is of the year 2018, the Tribunal took a notional income of Rs.10,000/-. The notional income taken by the Tribunal at Rs. 10,000/- cannot be faulted. However, we find that the Tribunal had taken future prospects at 50%. Since the Tribunal had found that the first respondent was not in permanent employment, the future prospects ought to have been taken at 40% as per the decision of the Hon'ble Apex Court in ***National Insurance Company Limited vs. Pranay Sethi*** reported in ***[(2017) 16 SCC 680]***.



C.M.A.No.3318 of 2021

Hence, 50% future prospects awarded is reduced to 40%. Thus by fixing Rs.10,000/- as monthly notional income, granting 40% enhancement towards future prospects and applying multiplier 18, the compensation awarded by the Tribunal towards permanent disability is reduced to Rs.30,24,000/-. The appellant was unable to find fault with the award of compensation under the other heads. Therefore, we see no reason to interfere with the finding of the Tribunal as regards the compensation awarded under other heads. However, we find that the interest awarded by the Tribunal at the rate of 9% per annum is exorbitant and in the facts and circumstances of this case, we are of the view that the interest ought to be fixed at 7.5% per annum. The interest component alone is modified from 9% per annum to 7.5% per annum. 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 or reduced
1	Transport to Hospital	1,30,000/-	1,30,000/-	confirmed
2	Extra	75,000/-	75,000/-	confirmed



C.M.A.No.3318 of 2021

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
	Nourishment			
3	Attender charges	3,00,000/-	3,00,000/-	confirmed
4	Future Medical Expenses	1,25,000/-	1,25,000/-	confirmed
5	Damages for clothes and articles	3,000/-	3,000/-	confirmed
6	Medical Expenses	9,96,000/-	9,96,000/-	confirmed
7	Pain and sufferings	2,00,000/-	2,00,000/-	confirmed
8	Permanent Disability & Loss of Earning Power	32,40,000/-	30,24,000/-	reduced
	Total	50,69,000/-	48,53,000/-	reduced
	80% of compensation (20% negligence fixed on the deceased)	40,55,200 rounded off to 40,56,000/-	38,82,400/- rounded off to Rs.38,83,000/-	Reduced by Rs.1,73,000/-



C.M.A.No.3318 of 2021

Thus, the Appellant is liable to pay the compensation of Rs.38,82,400/- rounded off to Rs.38,83,000/-. [Rs.48,53,000/- (-) Rs.9,70,600/- (Deduction of 20% towards contributory negligence) = Rs.38,82,400/-].

12.In the result, this Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal at Rs.40,56,000/- is reduced to Rs.38,83,000/-. The Appellant / insurance company is directed to deposit the award amount now determined by this Court, together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit along with interest and costs, less the amount already deposited within a period of six (6) weeks from the date of receipt of a copy of this Judgment. On such deposit, the first respondent is permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The appellant / insurance company is permitted to withdraw the excess amount, if the entire award amount has already been deposited by them. The direction of the Tribunal to pay and recover from the second and third respondents remains unaltered. No costs. Consequently, connected Miscellaneous Petition is closed.



C.M.A.No.3318 of 2021

(V.M.V., J) (S.M., J)
17.11.2022

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Index : Yes / No

To

1.The Motor Accident Claims Tribunal,
Special Sub-ordinate Court,
Erode.

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

V.M.VELUMANI,J.
and
SUNDER MOHAN,J.

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