



C.M.A.No.4852 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 14.11.2022

CORAM

**THE HON'BLE MS.JUSTICE V.M.VELUMANI
and
THE HON'BLE MR.JUSTICE SUNDER MOHAN**

C.M.A.No.4852 of 2019
and
C.M.P.Nos.27495 of 2019 & 10049 of 2020

The Divisional Manager,
National Insurance Co.Ltd.,
Puducherry.

...Appellant

Vs

1.Arul
2.Philamina
3.Josephine
4.Mariyasamy

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 11.04.2019 made in M.C.O.P.No.452 of 2017 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Puducherry.



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For Appellant : Mr.S.Arunkumar
For Respondents : Mr.T.Saikrishnan

J U D G M E N T

[Judgment of the Court was made by SUNDER MOHAN,J,]

The Appellant has preferred the above Appeal challenging the Award passed by the Motor Accidents Claims Tribunal, II Additional District Judge, Puducherry in M.A.C.T.O.P.No.452 of 2017.

2.The Respondents 1 to 3 / the claimants in M.A.C.T.O.P.No.452 of 2017 before the Tribunal, had filed Claim Petition stating that on 01.01.2017 at about 01.00 a.m., the deceased by name Joseph along with his friend Arputharaj, were returning home in a Hero Honda Splendor plus bearing registration no.PY-01-BK-8978 in which the deceased was riding pillion. His friend Arputharaj was the rider. The rider rode the two wheeler in a rash and negligent manner because of which both the rider and the deceased fell down and sustained serious injuries on the head and other parts of the body. The deceased succumbed to the injuries. Therefore, the



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Respondents 1 to 3 filed Claim Petition for the compensation of Rs.50 Lakhs, against the fourth respondent / owner of the two wheeler and the insurer / the Appellant herein.

3.The Fourth Respondent herein, the owner of the two wheeler remained ex parte before the Tribunal.

4.The Appellant filed a counter stating that no such accident took place. The accident was not reported to the Police for nearly twenty days. The First Information Report was registered only on 21.01.2017. The death report of the deceased shows that the deceased sustained head injuries in the accident. If the deceased had worn helmet at the time of the accident, injuries and death could have been avoided. There is no fault on the part of the rider of the two wheeler. In any event, the compensation claimed is excessive and prayed for dismissal of the appeal.

5.Before the Tribunal, the respondents 1 to 3 examined three witnesses namely, PW1 to PW3 and marked Ex.P.1 to Ex.P.22 and the



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appellant examined two witnesses namely, RW1 and RW2 and marked Ex.R.1 to Ex.R.3.

6.The Tribunal, considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the fourth respondent and awarded a compensation of Rs.33,62,243/- to the respondents 1 to 3 and fixed 10% contributory negligence on the deceased for not wearing helmet.

7.Challenging the said award, the appellant has come out with the present appeal.

8.The Learned Counsel appearing for the Appellant submitted that the quantum awarded by the Tribunal is on the higher side and sought for reducing the same. The Learned Counsel further submitted that the Tribunal found that the deceased was not wearing helmet at the time of the accident and therefore held, that he was also liable for contributory negligence. The Learned Counsel further submitted that the Tribunal had only fixed



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contributory negligence of 10% on the deceased and submitted that the deceased is equally liable for negligence and the Tribunal ought to have fixed 50% contributory negligence. The Respondents 1 to 3 had marked Ex.P.9 which is the photocopy of the Medico legal intimation report of the deceased. In the said report, it is recorded that the deceased fell down because of the Bike stunts performed. The Learned Counsel would further submit that the complaint was lodged twenty days later and it is obvious that both the rider and the pillion rider were celebrating new year's eve as could be seen from the time of accident and prayed for allowing the appeal.

9.The Learned Counsel for the Respondents 1 to 3 / Claimants submitted that the Hon'ble Apex Court has held that merely because there is no helmet, it cannot be held that the deceased had contributed to the accident, if there is evidence to show that the accident took place on account of the negligent driving of the offending vehicle.

10.We have heard the Learned Counsel on either side and perused the pleadings, oral and documentary evidence and materials on record.



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11. Though the Learned Counsel for the Appellant challenged the quantum of compensation awarded by the Tribunal, there is no evidence let in by the Appellant to show that the quantum awarded by the Tribunal is erroneous. Hence, the compensation awarded by the Tribunal under all the heads are justified and there is no reason to interfere with. Further, we find that the Tribunal had found that the deceased was also liable for contributory negligence. The Respondents 1 to 3 have not challenged the said finding of the Tribunal. It is the Appellant's case that the deceased was equally liable for contributory negligence. Therefore, the only question to be determined in this Appeal is the percentage of contributory negligence on the part of the deceased.

12. The evidence suggests that the deceased died due to head injuries. The accident was not reported immediately to the police. Further, as rightly contended by the Learned Counsel for the Appellant, the accident took place on the night intervening 31st December and 1st January, when the mood to celebrate cannot be ruled out. Further, we find from Ex.P.9 that the



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deceased fell down and died because of performing bike stunts. For all the above reasons, we are of the view that contributory negligence on the part of the deceased can be fixed at 20%.

13. With the above modification, the Appeal is partly allowed fixing 20% contributory negligence on the deceased instead of 10% fixed by the tribunal. The award of the Tribunal on all other aspects are confirmed. The Appellant/Insurance Company is directed to deposit the award amount now determined by this Court (I.e. 80% of Rs.33,62,243/- = Rs.26,89,795/-) along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of receipt of a copy of this Judgment. On such deposit the Respondents 1 to 3 / claimants are permitted to withdraw their respective share of the award amount as per the direction and apportionment fixed by the Tribunal, 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. No costs. Consequently, connected Miscellaneous Petitions are closed.



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

14.11.2022

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Index: Yes/No

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

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To

1.The Motor Accidents Claims Tribunal,
II Additional District Judge,
Puducherry.

2.The Section Officer,
VR Section,
High Court of Madras,
Chennai – 600 104.

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