IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

CORAM:

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

C.M.A. No.3177 of 2021
and C.M.P.No.18012 of 2021

The Branch Manager,
Reliance General Insurance Co. Ltd.,
Vivyan Plaza, ground floor,
Door No.89, 100 feet road,
Mudaliarpet, Pondhicherry. ..
Appellant

Vs.

1. Asokan
2. Uma Rani
3.Rajesh Babu

.. Respondents

(R3 was set exparte before the Tribunal.
Hence, notice is dispensed with.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.02.2019, made in M.C.O.P. No.127 of 2016, on the file of the Sub Court, (Motor Accident Claims Tribunal), Tiruvarur.

For Appellant	: M/s. C.Bhuvanasundari
For RR1 & 2	: Mr.R.Baskar

J U D G M E N T

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company to set aside the judgment and decree dated 04.02.2019, made in M.C.O.P. No.127 of 2016, on the file of the Sub Court, (Motor Accident Claims Tribunal), Tiruvarur.

2.The appellant is the 2nd respondent in M.C.O.P. No.127 of 2016, on the file of the Sub Court, (Motor Accident Claims Tribunal), Tiruvarur.

The respondents 1 & 2/claimants filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Jeevarathnakumar who died in the accident that took place on 08.07.2015.

3.According to the respondents 1 & 2, on the date of accident, when the deceased Jeevarathnakumar was riding in a Hero Honda Splendor Plus bearing Registration No.TN 68 P 1797 on the Kollumangudi - Kumbakonnam main road, opposite to Ponniyamman kovil, the driver of the Lorry bearing Registration No.TN 30 U 7669 owned by the third respondent, drove the same from opposite direction in a rash and negligent manner, lost control and dashed against the motorcycle rode by the deceased and caused the accident. In the accident, the said Jeevarathnakumar sustained fatal injuries and died on the spot. The accident occurred only due to rash and negligent driving by the driver of the Lorry owned by the 3rd respondent and hence, the respondents 1 & 2 filed the said claim petition claiming compensation against the 3rd respondent and the appellant-Insurance Company as owner and insurer of the Lorry respectively.

4.The 3rd respondent, owner of the Lorry, remained exparte before the Tribunal.

5.The appellant, insurer of the Lorry, filed counter statement and denied all the averments made by the respondents 1 & 2 in the claim petition. According to the appellant-Insurance Company, on the date of accident, the driver of the Lorry was driving the vehicle slowly and cautiously following the traffic rules. The deceased Jeevarathnakumar rode the Hero Honda Splendor Plus bearing Registration No.TN 68 P 1797 in a rash and negligent manner and invited the accident. The accident occurred only due to the negligent riding of the motorcycle by the deceased Jeevarathnakumar. Hence, the appellant, the insurer of the Lorry is not liable to indemnify the 3rd respondent, owner of the Lorry. At the time of accident, the deceased Jeevarathnakumar did not possess valid driving license and rode the vehicle without wearing helmet. In any event, the respondents 1 & 2 have to prove the age, avocation and income of the deceased Jeevarathnakumar to claim compensation and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and marked 11 documents as Exs.P1 to P11. On the side of the appellant, no one was examined and no document was marked.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Lorry owned by the 3rd respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.39,20,000/- as compensation to the respondents 1 & 2.

8.Against the said award of the Tribunal dated 04.02.2019, made in M.C.O.P. No.127 of 2016, the appellant - Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the accident occurred only due to rash and negligent riding of the motorcycle by the deceased Jeevarathnakumar. However, the Tribunal erroneously held that the accident occurred due to negligent driving of the driver of the Lorry. The deceased Jeevarathnakumar was not possessing valid driving license and he plied the vehicle without wearing helmet at the time of accident. The Tribunal, considering the same, ought to have fixed 20% contributory negligence on the part of the deceased as per the judgment of this Court reported in ***2018 (2) TNMAC 168 DB [National Insurance Co. Ltd., Vs. Thangadurai and others].*** At the time of accident, the deceased was a Diploma AC Mechanic and was not having any permanent employment. The Tribunal erred in fixing the notional income of the deceased at Rs.15,000/-. The total compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10. The learned counsel appearing for the respondents 1 & 2 made

submissions in support of the award and the Tribunal considering the oral and documentary evidence adduced by the respondents 1 & 2, awarded the total compensation of Rs.39,20,000/-, which is just and reasonable and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing on both sides and perused the entire materials available on record.

12.From the materials available on record, it is seen that it is the case of the respondents 1 & 2 that on the date of accident, when the deceased Jeevarathnakumar was riding Hero Honda Splendor Plus bearing Registration No.TN 68 P 1797 on the Kollumangudi - Kumbakonnam main road, opposite to Ponniyamman kovil, the driver of the Lorry bearing Registration No.TN 30 U 7669 owned by the third respondent drove the same from opposite direction in a rash and negligent manner, lost control and dashed against the motorcycle rode by the deceased and caused the accident. To substantiate their case, the 1st respondent examined himself as P.W.1 and marked the FIR as Ex.P1. On the other hand, it is the case of the appellant-Insurance Company that the accident occurred only due to the negligent act of the deceased Jeevarathnakumar who rode the motorcycle in a rash and negligent manner and invited the accident. However, they have not examined the driver of the Lorry or any other eye-witness to disprove the evidence of P.W.1 and EX.P1 – FIR registered against the driver of the lorry. In the absence of any evidence on the side of the appellant insurance company, the Tribunal considering the evidence of P.W.1 and Ex.P1 – FIR held that the accident occurred only due to rash and negligent driving by the driver of the Lorry owned by the 3rd respondent. Hence, there is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as quantum of compensation awarded by the Tribunal, it is seen from the records that it is the case of the respondents 1 & 2 that on the date of accident, the deceased Jeevarathnakumar was aged 28 years and was earning a sum of Rs.25,000/- per month by working as AC Mechanic. The respondents 1 & 2 did not file any document to prove the avocation and income of the deceased. In the absence of any documentary evidence, the Tribunal relying on the judgment of the Hon'ble Apex Court in ***National Insurance Co. Ltd. v. Pranay Sethi and others reported in (2017) 16 SCC 680***, fixed a sum of Rs.15,000/- per month as notional income of the deceased. The notional income fixed by the Tribunal is excessive. The accident is of the year 2015. Considering the age and nature of work done by the deceased, the notional income fixed by the Tribunal is modified and fixed at Rs.11,000/- per month. As per Ex.P2, Postmortem Certificate, the deceased Jeevarathnakumar was aged 28 years at the time of accident. The Tribunal has granted only 25% towards future prospects. As per the judgment of the Hon'ble Apex Court reported in ***2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others],*** the respondents 1 & 2 are entitled to 40% enhancement towards future prospects. The Tribunal rightly adopted the multiplier '17', following the judgment of the Hon'ble Apex Court reported in ***2009 (2) TNMAC 1 (SC) [Sarla Verma & others vs. Delhi Transport***

Corporation & another]. However, the Tribunal has not deducted any amount towards personal expenses of the deceased since the deceased was a bachelor at the time of accident. Hence, this court is inclined to deduct 50% of the income towards personal expenses of the deceased. Thus, by fixing Rs.11,000/- as notional monthly income, granting 40% enhancement towards future prospects, applying multiplier 17 and deducting 50% towards personal expenses of the deceased, the compensation awarded by the Tribunal towards loss of income is modified to Rs.15,70,800/- (Rs.11,000/- + 4400 (40% of Rs.11000) x 12 x 17 x 1/2). Further, the sum of Rs.50,000/- awarded towards loss of love and affection is enhanced to Rs.80,000/- (Rs.40,000/- each) as the amount awarded by the Tribunal is meagre. 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	Amount awarded by this Court (Rs)	Award confirmed or enhanced or

		(Rs)		**granted**
1.	Loss of income	38,25,000/-	15,70,800/-	Reduced
2.	Loss of love and affection	50,000/-	80,000/-	Enhanced
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Transportation	15,000/-	15,000/-	Confirmed
5.	Pain and suffering	15,000/-	15,000/-	Confirmed
	Total	**39,20,000/-**	**16,95,800/-**	**Reduced by Rs.22,24,200/-**

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.39,20,000/- is modified and reduced to Rs.16,95,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.127 of 2016. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective 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. The appellant-Insurance Company is permitted to withdraw the excess amount, lying in the credit of M.C.O.P. No.127 of 2016, if the entire award amount has already been deposited by them. It is made clear that if the respondents 1 and 2 have already withdrawn the entire award amount, the appellant-Insurance Company is not entitled to recover the same from the respondents 1 and 2. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (S.M., J)
13.10.2022

Index : Yes/No
Speaking Order : Yes/No
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To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Tiruvarur.

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

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

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