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C.M.A(MD)No.870 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A (MD)No.870 of 2021

and

C.M.P (MD)No.8159 of 2021

The Branch Manager,
Reliance General Insurance Company Limited,
Door No.55, 80 Feet Road,
Sree Meenakshmi Plazza,
Anna Nagar,
Madurai Town, Madurai.

... Appellant/Respondent No.2

.Vs.

1.Angalaeswari
2.Umadevi
3.Sivaganesh
4.Minor Kirshnaraj

S.Palanisamy (Died)

5.P.Arumugammal
6.Santhanamoorthi
7.Meena
8.Saraswathi
9.Naganathan

... Respondents Nos.1 to 9/
Petitioners

(Minor 4th respondent through his mother
and natural guardian first respondent)

(Respondents 7 to 10 are impleaded as
Legal heirs of the deceased 5th respondent as
per order in I.A.No.1/2019, dated 13.09.2019
and amended order in I.A.No.2/2019
dated 13.12.2019)

10.Alagu Ramanujam

... Respondent No.10/
Respondents No.1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988 praying this Court to set aside the
judgment and decree, dated 25.01.2021 passed in M.C.O.P.No.52 of

<https://heservices.ecourts.gov.in/hcservices/>



2017, on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Aruppukottai.

For Appellant : Mr.V.Sakthivel
For R1 to R5 & R9 : Mr.G.Mariappan
For R6,R7,R8 & R10 : No appearance

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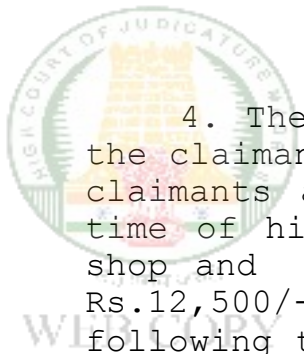
JUDGMENT

Judgment of the Court was made by DR.G.JAYACHANDRAN,J.

This Civil Miscellaneous Appeal has been preferred by the Insurance Company challenging the quantum of award passed by the Tribunal as compensation to the dependents of the deceased Karuppasamy.

2. The brief facts of the case is that on 19.08.2017 at about 02.00 p.m., near Aruppukottai-Sayalgudi Road, near Mandapasalai Petrol Bunk, while the deceased Karuppasamy was riding his vehicle bearing Registration No.TN-67-AH-8833 and his brother Naganathan along with his relative in another two-wheeler bearing Registration No.TN-AE-2598 returning home after their job, a van bearing Registration No.TN-22-K-8842 driven by its driver Nagaraj, owned by the 10th respondent herein, who is the first respondent in the claim petition, rash and negligently ahead of two two-wheelers stopped without any signal and therefore, the said Karuppasamy had driven his two-wheeler and dashed behind the van and sustained serious head injury. His brother who was following him in another two-wheeler, took him to a private hospital. The injured was referred to Arupukkottai Government Hospital for further treatment and on reference, he was shifted to Velammal Hospital, Madurai. However, his health got further deteriorated, hence he was referred to the Government Rajaji Hospital, Madurai. In spite of taking treatment at various hospitals, he succumbed to the injury on 21.08.2017 at about 09.30 p.m. The claim petition against the Van owner and its insurer was filed by the wife, four children and mother of the deceased alleging that the accident had occurred due to the negligence on the part of the Van driver. The Van being insured with the second respondent/the appellant herein, is liable to compensate. Since, at the time of accidental death, the deceased was aged about 43 years, earning Rs.60,000/- per month. Due to his sudden demise, they have lost their moral and economical dependency, compensation of Rs.40,00,000/- was sought.

3. The Insurance Company filed a counter affidavit stating that the accident took place only due to the negligence on the part of the deceased, who had no driving licence and also he was not wearing helmet, which is mandatory. Further, there is no sufficient proof for the income.



4. The Tribunal, after considering the oral evidence let in by the claimants and the 30 documents marked as exhibits, held that the claimants are the dependents of the deceased Karuppasamy. At the time of his death, the deceased Karuppasamy was running a Welding shop and being a skilled worker his notional income was fixed at Rs.12,500/- per month. After adding 25% towards future prospects, following the decision in **2009(2)TN MAC 1 (SC) Sarla Verma v. Delhi Transport Corporation** and **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]**, the Tribunal has awarded a sum of Rs.19,68,750/- towards loss of dependency after the standard deduction and awarding compensation under other non-conventional heads such as loss of estate, funeral expenses and loss of consortium as prescribed by the Supreme Court under **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]**, a total sum of Rs.21,58,750/- was awarded.

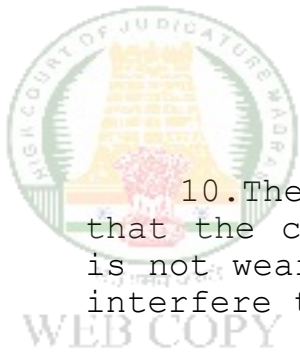
5. The Tribunal has directed to apportion the awarded amount as below:- In respect of the first petitioner/wife Rs.10,00,000/-, in respect of the petitioners 2 to 4 Rs.3,50,000/- each and in respect of fifth petitioner Rs.1,08,750/-.

6. Being aggrieved by the quantum of award and the fixation of entire negligence on the part of the insured vehicle driver, the present appeal has been filed by the Insurance Company.

7. This Court heard the learned counsel appearing for the appellant and the respondents.

8. On a perusal of the records, this Court finds that as far as the negligence is concerned, though it was canvassed by the counsel for the appellant that the deceased had not maintained 10 ft. distance between the vehicle going ahead, which is prescribed under the Motor Vehicles Rules and he was not wearing helmet and if he had followed these two rules scrupulously, he would have avoided the accident and escaped from death.

9. Referring the Postmortem certificate, the learned counsel for the appellant would submit that the cause of the death as found in the post-mortem certificate indicates that he sustained 2x1 cm abrasion in the middle of his fore-head. Subscalpal contusion measuring 16 cm x 10 cm noted over left fronto parieto temporal occipital region. Fracture vault of skull 9cm in length noted over left parieto temporal bone. The post-mortem Doctor has opined that the deceased would appear to have died of multiple injuries. The fatal injury appears to be on the head. Had the deceased wear helmet, certainly, the death could have been avoided. In addition, it was canvassed that the deceased had no driving licence. However, pending appeal, across the bar, the learned counsel for the respondents 1 to 5 & 9/claimants had furnished the driving licence of the deceased, which is valid up to 08.07.2023.



10.

10. Therefore, this Court is of the view that except the plea that the contributory negligence on the part of the deceased as he is not wearing the helmet, no other point for consideration worth to interfere the award of the Tribunal.

11. Wearing helmet is mandatory. In spite of repeated orders of this Court, as well as the statute it is more breached than honoured. Such voluntary disobedience falls within the doctrine of volenti non fit injuria. In this case, though the deceased has contributed by his negligence, the real sufferers are the claimants, who are dependants of the deceased.

12. This Court is of the view that for contributory negligence on the part of the deceased 10% of the total amount has to be deducted. Accordingly, the award of the Tribunal is interfered with and out of total award of compensation passed by the Tribunal, 10% is deducted towards contributory negligence. Accordingly, the award of the Tribunal is modified from Rs.21,58,750/- to Rs.19,42,875/-.

13. The learned counsel for the appellant/Insurance Company submitted that the award amount along with interest has already been deposited. In view of the above, the respondents 1 to 3 & 5 & 9 are permitted to withdraw their share in the award amount together with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal, less the amount already withdrawn, if any, by making necessary application before the Tribunal.

14. At the time of filing claim petition, the fourth respondent/fourth claimant Kirshnaraj, S/o.Late.Karuppasamy was about 14 years old. Therefore, this Court while permitting the claimants to withdraw the award amount on appropriate application, the share of the minor claimant Kirshnaraj shall be kept in fixed deposit till he attains majority and when he attains majority, he is entitled to withdraw his share in the award amount along with proportionate accrued interest and costs.

15. The Tribunal is directed to refund the excess amount, if any, along with proportionate accrued interest to the Insurance Company/ the appellant herein.



16.In view of the above, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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To
The Subordinate Judge,
The Motor Accident Claims Tribunal,
Aruppukottai.

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The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai - 2 Copies

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-916[F] dated 10/01/2022)

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07.01.2022

AC (CO)

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