BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.12.2022

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THE HONOURABLE MRS.JUSTICE **N.MALA**

C.M.A.(MD)No.1039 of 2022

1.Seetha
2.Nagarajan
3.Sakthi Vijay ... Appellants / Claimants

Vs.

The Managing Director,
State Express Corporation Limited,
Thiruvalluvar House,
Pallavan Salai,
Chennai. . ... Respondent / Respondent

PRAYER :- This Civil Miscellaneous Appeal is filed under Section 173 (1) of Motor Vehicles Act, to set aside the judgment and decree made in M.C.O.P.No.1394 of 2015 on the file of the Motor Accident Claims Tribunal, (Special Sub-Court Dealing with MCOP Cases), Tirunelveli dated 18.07.2022 insofar as fixing liability of contributory negligence on the deceased and direct the respondent to pay 80% of the compensation awarded in the claim application.

For Appellants : Mr.T.Lenin Kumar

For Respondent : Mr.P.Prabhakaran

JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellants / claimants against the award passed by the Tribunal, dated 18.07.2022 in M.C.O.P.No. 1394 of 2015 claiming enhancement of compensation for the death of the deceased one Arumugam.

2. When the deceased was riding a motor-cycle along with his son Sakthi Vijay in Tirunelveli to Madurai main road, the bus belonging to the respondent Transport Corporation coming from the opposite direction hit against the deceased's motor cycle and the two were thrown away and fell on the road. The son of the deceased, who was the pillion rider suffered injuries as also the deceased sustained head injuries and succumbed to the same. Therefore, the widow and the son of the deceased filed a claim petition claiming a sum of Rs.25 lakhs as compensation.

3. The respondent Transport Corporation filed a counter, wherein it was stated that the accident occurred only due to the rash and negligent driving of the deceased and the claim petition was bad-in-law for non joinder of necessary party i.e., the Insurance Company of the motor cycle. The deceased had not worn helmet at the time of accident and also he did not possess valid driving licence at the time of the accident. The respondent therefore, prayed for dismissal of the claim petition as meritless.

4. The Motor Accident Claims Tribunal, on appreciation of the entire evidence on record allowed the claim petition by awarding compensation as follows:

Sl.No.	Heads	Calculation (Rs.)
1.	Salary	7,000.00
2.	Future Prospects at 10%	7000 + 700 7,700.00
3.	1/3rd of the income (ii) deducted as personal expenses of the deceased	7700-2567 5,133.00
4.	Compensation after multiplier of 11 is applied	5133 * 12 * 11 6,77,556.00
5.	Loss of Consortium to the wife	44,000.00
6.	Loss of Estate	16,500.00
7.	Funeral Expenses	16,500.00
8.	Medical Expenses	2,39,127.00
Total Compensation Awarded		9,93,683.00
Amount of compensation to be deducted at 20%		1,98,737.00
Total compensation payable to the claimants after deduction		7,94,946.00

Not satisfied with the award passed by the Tribunal, the appellants / claimants have filed the present appeal.

5. The learned counsel for the appellants / claimants submits that the tribunal has deducted 20% of the compensation amount towards the contributory negligence of the deceased as the deceased did not wear helment at the time of the accident. According to the learned counsel, as per the judgment of the Hon'ble Division Bench of this Court deduction for non wearing of helmet can only be at 10% and not 20%. The learned counsel further submitted that the tribunal had failed to award any compensation towards loss of consortium to the appellants 2 and 3, who lost their father in the accident. The learned counsel further submitted that the income assessed by the tribunal was very low. The learned counsel submitted that considering the fact that the deceased was a skilled carpenter aged 53 years, his income should have been taken at Rs.9,000/- per month.

6. The learned counsel for the respondent Transport Corporation, on the other hand submits that this Court in the case of ***Royal Sundaram Alliance Insurance Co. Ltd., vs. D.Ramakrishnan and Others*** *reported in* ***2021 ACJ***

511 had deducted 20% and therefore, the tribunal cannot be faulted for deducting 20% towards contributory negligence for not wearing helmet. The learned counsel submits that as far as the enhancement of income is concerned, in the absence of any evidence, the Tribunal was fully justified in adopting the notional income of Rs.7,000/- per month and adding 10% towards future prospects. He therefore, submits that the income assessed by the tribunal is justified and needs no interference.

7. The learned counsel for the respondent Transport Corporation fairly conceded that as per the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited vs. Pranay Sethi and Others*** *reported in* ***2017 (2) TNMAC 609***, the appellants 2 and 3 are also entitled to loss of consortium.

8. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

9. As far as the first submission of the learned counsel for the appellants is concerned, it is seen from the claim petition that the deceased sustained serious head injuries. Had the deceased worn a helmet he may have escaped from head injuries. 1 am therefore of the considered view that deduction towards non-wearing of helmet is justified. I am not inclined to adopt 20% deduction as adopted in ***2021 ACJ 511***, because the compensation awarded in this case is only Rs.9,73,515/- whereas in the said case it was Rs.46,66,487/-. I am of the further view that the deduction towards contributory negligence for not wearing helmet can only be 10%. I am fortified in this view by judgment of the Hon'ble Division Bench of this Court in ***C.M.A.No.1739 of 2016, dated 27.06.2018*** in the case of ***M/s.United India Insurance Co. Ltd., vs. M.Ravikumar and another***. In the said case, the Hon'ble Division Bench deducted 10% towards contributory negligence for not wearing helmet. Following the Hon'ble Division Bench judgment, the deduction towards contributory negligence is fixed at 10% as against 20% fixed by the tribunal.

10. As far as the fixation of income of the deceased is concerned, I am in agreement with the learned counsel for the respondent that in the absence of any evidence, the amount fixed by the tribunal is justified and calls for no interference. The third issue is the award towards loss of consortium to the appellants 2 and 3. The learned counsel for the respondent himself has fairly conceded that the appellants 2 and 3 are entitled to Rs.44,000/- each towards loss of consortium. In the light of the above, the award of the tribunal is modified as follows:

Sl.No.	Heads	Calculation (Rs.)
1.	Salary	7,000.00
2.	Future Prospects at 10%	7000 + 700 7,700.00
3.	1/3rd of the income (ii) deducted as personal expenses of the deceased	7700-2567 5,133.00
4.	Compensation after multiplier of 11 is applied	5133 * 12 * 11 6,77,556.00
5.	Loss of Consortium to the wife and two sons	44,000 * 3 1,32,000.00
6.	Loss of Estate	16,500.00
7.	Funeral Expenses	16,500.00
8.	Medical Expenses	2,39,127.00
Total Compensation Awarded		10,81,683.00
Amount of compensation to be deducted at 10%		1,08,168.30
Total compensation payable to the claimants after deduction		9,73,514.70 (round off) 9,73,515.00

11. In the result, the appeal is partly allowed and the judgment and decree of the Motors Accident Claims Tribunal is modified to the extent stated above. The award is enhanced to **Rs.9,73,515/-** from Rs.7,94,946/-. The appellants / claimants are entitled to the interest at the rate of 7.5% for the enhanced compensation. The respondent is directed to deposit the modified award amount, less the amount already deposited within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, out of the compensation amount, the first appellant / claimant is entitled to a sum of Rs.3,89,406/- with accrued interests, the second and third appellants / claimants are entitled to a sum of Rs.2,92,054/- each, with accrued interests. The appellants / claimants are permitted to withdraw their share respectively.

16.12.2022

Index : Yes / No
Internet : Yes / No

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To

1.The Managing Director,
State Express Corporation Limited,
Thiruvalluvar House,
Pallavan Salai,
Chennai.

2. The Motor Accident Claims Tribunal,
(Special Sub-Court Dealing with MCOP Cases),
Tirunelveli

3.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

N.MALA, J.

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