THE HON'BLE SMT. JUSTICE P.MADHAVI DEVI

M.A.C.M.A. No.2845 of 2016

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M.A.C.M.A. No.9 of 2017

COMMON ORDER:

1. These two appeals are the cross-appeals filed by the Insurance Company as well as the claimants against the award passed by the Tribunal in M.V.O.P.No.2312 of 2013 dated 23.06.2016.

2. The claim petition was filed by the dependants of the deceased in the accident that occurred on 16.08.2012. The deceased was 19 years old and was allegedly working with M/s.Basix Krushi Samrudhi Limited and was earning a sum of Rs.10,000/- per month.

3. The grounds raised by the Insurance Company are that Insurance Company is not liable to pay the compensation as the owner of the vehicle violated the policy conditions. One of the objection is that the driver, who was driving the motor cycle, was not having any sort of licence and further that three (3) people were riding on the motorbike, which is also against the policy. It is submitted that because of triple riding, driver of the motor cycle lost

control and fell into canal. However, the deceased was the only person, who died in the incident. Therefore, it is submitted that there was contributory negligence on the part of the riders of the motor cycle and the entire liability cannot be fastened on the Insurance Company.

4. The learned counsel for the appellants submitted that since there is only one (1) vehicle involved in the accident, there cannot be any contributory negligence on the part of the appellants. He would also submit that the deceased was a pillion rider and no liability can be fastened on him, as was held by the High Court of Rajasthan at Jodhpur in case of ***Sohan Ram vs Taj Khan and others***[1]***.***

5. Having regard to the rival contentions and the material on record, this Court is of the opinion that though there is no other vehicle which is involved in the accident, it is also proved that three (3) people were riding on the motorcycle and the accident occurred while they were travelling and therefore, contributory negligence on the part of the riders of the motor cycle cannot be ruled out. It is a known fact that the motor cycle should be used for riding by only two people

[1] 2019 ACJ 252

but not by more than two (2) people and if any accident occurs at the time of the riding of the vehicle by more than two (2) people, then it is to be presumed that there is contributory negligence on the part of the rider of the vehicle. However, in this case, the deceased is a pillion rider and therefore, this Court is of the opinion that 20% is to be considered as contributory negligence on his part.

6. As regards the cross appeal of the claimants and also appeal of the Insurance Company with regard to the quantum of the compensation is concerned, this Court finds that the main objection is with regard to income of the deceased. The claimants claimed Rs.10,000/- as income of the deceased, whereas, the Tribunal has granted Rs.4,500/- per month. The grievance of the Insurance company is that there is no evidence with regard to monthly income of the deceased, they neither submitted nor placed any document in support of the same nor the employer was examined by the claimants.

7. Having regard to the evidence on record, this Court is of the opinion that the deceased being 19 years old was undisputedly holding a Diploma in Agriculture. He has to be

considered as a prospective employee or potential employee with reasonable monthly income. The Tribunal has considered a sum of Rs.4,500/- per month, as the monthly income of the deceased. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in ***V.Mekala vs M.Malathi and another*[2]*,*** to contend that the income of a bright student should be adopted as Rs.10,000/- per month and compensation towards loss of future prospects should be awarded at 50%. The Tribunal has recorded that the deceased was the holder of a Diploma in Agriculture with 85% marks. He has to be considered as a bright student and following the citation of the Hon'ble Supreme Court, the monthly income of the deceased is directed to be considered at Rs.10,000/- per month. Compensation towards loss of Future Prospects was rightly awarded @ 40% and multiplier is correctly adopted as '18' and as the deceased was a bachelor, the deduction towards his personal expenses has to be at 50% of his income and the compensation has to be computed accordingly. As regards funeral expenses and loss of estate, Rs.15,000/- +10% enhancement thereof is to be awarded under each

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[2] 2014 ACJ 1441

head and the claimants being the parents of the deceased are also entitled to filial consortium @ Rs.40,000/- each with 10% enhancement thereon. Thereafter, 20% is deducted towards contributory negligence on the part of the deceased.

8. In the light of the above mentioned discussion, the claimants are entitled to the following amounts:

Sl.No.	**Head**	**Compensation awarded**
1.	Income	Rs.10,000/- per month
2.	Annual income	Rs.1,20,000/- (Rs.10,000x12=Rs.1,20,000)
3.	Deductions towards personal expenses	Rs.60,000/- (Rs.1,20,000 x 50% as the deceased is a bachelor).
4.	Future Prospects	Rs.24,000/- (Rs.60,000 x40%)
5.	Multiplier	18
6.	Loss of dependency	Rs.15,12,000/- (Rs.84,000x18
7.	Loss of parental consortium – ***Magma General Insurance Co.Ltd Vs.Nanu Ram Alias Chuhru Ram – 2018 Law Suit (SC) 904***	Rs.88,000/- (10% enhancement = Rs.44,000/- (Rs.40,000/- + Rs.4,000/- to the parents of the deceased)
8.	Funeral expenses	Rs.16,500/- (Rs.15000/- + 10% thereof)
9.	Loss of estate	Rs.16,500/- (Rs.15,000/- + 10% thereon)

	Total	**Rs.16,33,000/-**
10.	Liability of Insurance Company	**Rs.13,06,400/-** (after deducting 20% towards contributory negligence.)
11.	Liability of owner of the vehicle	**Rs.3,26,600/-**

9. In the result, the award dt.23.06.2016 in M.V.O.P. No.2312 of 2013 on the file of the Motor Accidents Claims Tribunal-cum-X Additional Chief Judge, City Civil Courts, Hyderabad, is modified by awarding a total compensation of Rs.16,33,000/- (Rupees sixteen lakhs and thirty three thousand only) with costs and interest @ 7.5% per annum thereon from the date of the claim petition till the date of realization. Out of the said amount of compensation, the respondent insurance company is liable to pay Rs.13,06,400/- (after deducting 20% towards contributory negligence of the owner of the crime vehicle) and the respondent owner of the crime vehicle is liable to pay Rs.3,26,600/-. As the compensation payable to the claimants as per law was found to be higher than the original claim of Rs.10,00,000/-, the enhanced compensation of Rs.6,33,000/- is granted subject to payment of Court fee thereon by the claimants. The

respondents (owner and insurance company) are directed to deposit the compensation amount awarded within 60 days from the date of receipt of a copy of this judgment, after giving credit to the deposit of amount, if any, already made. On such deposit, the claimants are permitted to withdraw the same without furnishing any security as per the following shares :

Claimant No.1 (mother) Rs.8,33,000/-

Claimant No.2 (father) Rs.8,00,000/-

10. M.A.C.M.A No.2845 of 2016 filed by the claimants is allowed without costs. M.A.C.M.A.No.9 of 2017 filed by the insurance company is partly allowed without costs.

11. Pending miscellaneous petitions, if any, in these Appeals shall stand closed.

JUSTICE P.MADHAVI DEVI

Date: 16.06.2022.
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THE HONOURABLE SMT JUSTICE P. MADHAVI DEVI

M.A.C.M.A. No.2845 of 2016

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M.A.C.M.A. No.9 of 2017

Date:16.06.2022

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