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C.M.A.No.3110 of 2019 & Cros.Obj.NO.49 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.06.2023

PRONOUNCED ON: 05.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.3110 of 2019

and

Cros.Obj No.49 of 2022

and

CMP.No.17355 of 2019

The Divisional Manager,
United India Insurance Co. Ltd.,
Vellore.

... Appellant in CMA.NO.3110 of 2019

1.Anjana
2.R.Boopathi

... Cross Appellants in Cros.Obj. 49 of 2022

Vs.

1.Anjana
2.Govindan
3.R.Boopathi

... Respondents in CMA.NO.3110 of 2019



C.M.A.No.3110 of 2019 & Cros.Obj.NO.49 of 2022

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1. The Divisional Manager,
United India Insurance Co. Ltd.,

Vellore.

2. R.Boopathi

...Respondents in Cros.Obj. 49 of 2022

Prayer in CMA.NO.3110 of 2019: Civil Miscellaneous Appeal filed under 173 of Motor Vehicles Act to set aside the decree and judgement dated 06.08.2018 made in MCOP.No.216 of 2016, on the file of the Motor Accident Claims Tribunal/ III Additional District Judge, Tirupattur at Vellore District.

Prayer in Cros.Obj.No.49 of 2022: This Cross Objection has been filed under Order 41 Rule 22 of C.P.C against the judgement and decree dated 06.08.2018 made in MCOP.No.216 of 2016 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Vellore at Tirupattur.

In CMA.NO.3110 of 2019:

For Appellant : M/s.J.Chandran

For respondents : M/s.A.Subadra
for M/s.M.Malar

In Cros.Obj.No,49 of 2022

For Appellant : M/s.A.Subadra
for M/s.M.Malar

For respondents : M/s.J.Chandran



C.M.A.No.3110 of 2019 & Cros.Obj.NO.49 of 2022

JUDGMENT

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The appeal is filed by the insurance company challenging the award passed by the Tribunal in M.C.O.P.No.216 of 2016 dated 06.08.2018 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Vellore at Thirupathur where in Tribunal held that claimants are entitled for compensation of Rs.7,10,400/- and the second respondent is liable to indemnify the first respondent to pay the compensation.

Cros.Obj.No.49 of 2022 is filed by the claimants for enhancement of compensation awarded in M.C.O.P.No.216 of 2016 dated 06.08.2018 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Vellore at Thirupathur.

2. The parties are referred to hereunder according to the status and ranking before the Tribunal.

3. The claimants are dependents of deceased Balakrishnan and on 22.04.2016 at about 07.00 p.m., the deceased was riding his two wheeler bearing registration No.TN 23 BW 1723 on the Natrampalli to Puthupet



main Road while he reached near government Hospital, a auto rickshaw bearing Registration No.TN 23 BY 3245 came in a rash and negligent manner and dashed against the two wheeler driven by deceased which resulted in causing grievous injuries leading to his death. The criminal case was registered against the deceased in Cr.No.208 of 2016 of under Sections 279, 337, 304A of IPC on the file of Natrampatti Police Station. The respondent is the owner of the Auto Rickshaw and the second respondent is the insurer of the Auto Ricksha, hence both respondents are liable to pay the compensation.

4. The first respondent remained exparte before the Tribunal and has not contested the claim petition.

5. The second respondent have filed the counter and contended that the accident occurred due the rash and negligent driving of the deceased Bala Krishnan and the driver of the Auto Rickshaw is not responsible for the accident. It is further contended that a criminal case was registered only against the deceased Bala Krishanan, thereby Insurance company of the Auto Rickshaw is not responsible to pay the compensation. The driver of the



Auto Rickshaw is also not having a valid driving license at the time of accident to drive the three wheeler, there is violation of policy condition.

The compensation claimed by the claimants under various heads are also on higher side and prays to dismiss the claim petition.

6. Before the Tribunal, on the side of claimants, P.W.1 to PW3 were examined and exhibits Exs.P.1 to P.5 were marked in support of their claim and on the side of the respondent R.W1 to R.W.4 were examined and exhibits Exs.B.1 to B.15 were marked.

7. On the basis of the evidence recorded, the Tribunal has held that negligent driving of the Auto Rickshaw driver is responsible for the accident causing death of the deceased, and there is no violation of policy conditions. The Tribunal has quantified the compensation to be paid and awarded a sum of Rs.14,20,800/- as a compensation. Aggrieved over the liability to pay the compensation and also the quantum of compensation awarded, the insurance company has come forward with this appeal.

8. The learned counsel for the insurance company submitted that the



Tribunal failed to consider the fact that the criminal case was registered the case only against Bala Krishnan stating that he is responsible for the accident and Tribunal has also failed to appreciate the other evidence produced on the side of the insurance company to show that negligent act of the deceased alone is responsible for the accident. The Tribunal has failed to consider that there is violation of policy condition that the driver of the Auto Rickshaw was not having separate badge to drive the three wheeler and the Tribunal erroneously held that the Auto Rickshaw falls within the category of the LMV and license is sufficient to drive the Auto Rickshaw. The quantum of compensation awarded is also on higher side, hence prays to modify the same, in case if this Court holds that the driver of Auto Rickshaw is responsible for the accident.

9. Per contra, the learned counsel for the claimant would submit that the Tribunal has failed to fix the notional income of the deceased as per the norms followed in the year 2016 and Tribunal has not awarded compensation under the head Future Prospects and failed to award compensation under the head Loss of Consortium, hence prays to revise the quantum of compensation and enhance the same. The learned counsel has



also submitted that the Tribunal properly considered the evidence placed on record with regard to negligent act on the part of the Auto Rickshaw driver and respondent has not adduced any contra evidence to disprove the evidence placed on the side of the claimants. Hence, there is not merit in the claim that the deceased is tort-feasor and claimants are not entitled to compensation.

10. I have considered the submissions both sides and also perused the records.

11. On the side of the claimants, they have examined P.W.2 and 3 who are eye witness to the occurrence and they have stated that while the deceased was driving his two wheeler with due care and caution, the driver of the Auto Rickshaw drove the vehicle in high speed and hit against the two wheeler which resulted in causing the accident and injuries to the deceased. Evidence also placed on record to show that the deceased has become unconscious and immediately he was taken to the hospital. The driver of Auto Rickshaw has lodged a complaint before the Natrampalli police station stating that he drove the vehicle with due care and caution and the deceased



two wheeler rode the vehicle in high speed and hit on the Auto Rickshaw.

However, while examining the driver of the Auto Rickshaw before the Tribunal, he has stated that he was also injured in the accident and he has not lodged any criminal complaint and while taking treatment somebody has obtained signature from him and he was not aware about the contents in the FIR. This shows that Auto driver has not lodged complaint as stated in the FIR and in the absence of corroborative evidence for the Auto Driver, the Tribunal has rightly accepted the evidence of P.W.2 and 3 as sufficient to probabilistic the case of the claimant. Hence, this Court confirms the finding of the Tribunal with regard to the Negligence on the part of the driver of Auto Rickshaw.

12. The next contention of the insurance company is that the driver of the Auto Rickshaw was not having a valid driving license at the time of accident is concerned, the Junior Assistant of RTO was examined before the Tribunal and he has stated that the three wheeler has been classified as LMV vehicle and person who is driving the auto is entitle to drive the Auto Rickshaw. The Hon'ble Apex Court in **Mukund Dewangan vs Oriental Ins.Co.Ltd.**, reported in 2017 ACJ 2011 has held that a person who is having



LMV license is also entitled to drive transport vehicle which is having less than 7500 kgs of unladen vehicle. In this case, the driver of the Auto Rickshaw who is having LMV license and I am of the view that eventhough acquiring badge endorsement is necessary for driving Auto Rickshaw. The principle laid down in Mukund Dewangan case cited supra is applicable to this case also, accordingly, this Court find no infirmity in the finding of the Tribunal that there is no violation of policy condition.

13. Regarding the quantum of compensation Tribunal has notionally fixed the income of the deceased as Rs.9000/- per month and since deceased un-married and aged about 19 year and after deduction of 50% towards personal expenses, Rs.4500/- was taken as monthly income of the deceased. Learned counsel for the cross appellant has relied on the Division Bench judgment of this Court in C.M.A.NO.1635 of 2020, dated 09.02.2023 between ***Kumudha and others vs. the Managing Director and Anr.*** wherein this Court fixed the notional income of the deceased who was aged about more than 25 years for the accident held on 06.10.2018 as Rs.15,000/- per month.



14. Considering the judgment cited by the learned counsel for the claimants and in the case on hand, the deceased was aged about 19 years and the accident was taken place in the year 2016, as per the norms, fixing of notional income of the deceased as Rs.12,000/- would be reasonable and accordingly this Court fixes the notional income of the deceased as Rs.12,000/- per month. After deduction of 50% for his personal expenses the actual income to the family comes to Rs.6,000/- per month. Thereby, the loss of income is Rs. 12,96,000/- = (Rs.6,000/- x 12 x 18). Future prospects 40% comes to (2400 x 12 x 18)= Rs.5,18,400/- is also granted herein. The claimant are also entitled for Rs.40,000/- each under the head loss of Consortium and Rs.15,000/- under the Funeral Expenses and held in ***Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram*** reported in AIRONLINE 2018 SC 1249

15. In the light of the above discussion, the award of the Claims Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1	Loss of Income	9,72,000/-	12,96,000/-	Enhanced



2	Future Prospectus	3,88,800/-	5,18,400/-	Enhanced
3	Funeral Expenses	15,000/-	15,000/-	Confirmed
4	Loss of Consortium	40,000/-	80,000/-	Confirmed
5	Transportaion	5,000/-	5,000/-	Confirmed
	Total	Rs.14,20,800/-	Rs.19,14,000/-	Enhanced by Rs.4,53,600/-

16. In the result:

(i) The Civil Miscellaneous Appeal 3110 of 2019 filed by the insurance company is dismissed and the Cross Objection No.49 of 2022 filed by the cross appellants is partly allowed by enhancing the compensation awarded by the Tribunal to Rs.19,14,000/- from Rs.14,20,800/ .

(ii) The second respondent directed to deposit the above enhanced compensation amount together with interest at the rate of 7.5% from the date of petition to the date of realization within a period of six weeks from the date of receipt of copy of this order, less the amount, if any already deposited. On such deposit, the climants are entilted to withdraw the same by making appropriate application.

(iii) The appportionment of the Tribunal is confimed.



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WEB COPY (iii) There shall be no order as to costs.

(iv) Consequently connected miscellaneous petition is closed.

05.09.2023

jai

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Motor Accidents Claims Tribunal,
III Additional District Judge,
Tirupattur, Vellore District.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K.RAJASEKAR, J.

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