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C.M.A. No.284 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.284 of 2022

1.Meena

2.Minor Kanishka

3.Minor Sabarivasan

4.Minor Sunmathi

5.Jayamani

..

Appellants

Vs.

1.Baskaran

2. The Divisional Manager

Divisional Office,

New India Assurance Co. Ltd.,

Office situated at Amman Complex,

Mettur Road, Erode – 638 011.

..

Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.03.2021 passed in MCOP No.602 of 2018 on the file of Motor Accident Claims Tribunal, Special District Court at Erode District.



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For Appellants : Mr.Ma.P.Thangavel

For Respondents : No appearance for R1
Mrs.R.Sreevidhya for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the award dated 30.03.2021 passed in MCOP No.602 of 2018 on the file of Motor Accident Claims Tribunal, Special District Court at Erode District.

2. The appellants filed MCOP No.602 of 2018 on the file of Motor Accident Claims Tribunal, Special District Court at Erode District claiming a sum of Rs.30,00,000/- as compensation for the death of one Murugesan who died in the accident that took place on 01.02.2018.

3. According to the appellants, on 01.02.2018, while the deceased Murugesan was riding his TVS XL bearing Regn.No.TN39 BW 0816 alongwith his friend as pillion rider, on the Avinashi to Karumathampatty



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Road, near Thekkalur Santhai from East to West direction, the 1st respondent rode his bike bearing Regn.No.TN37 BY 4340 in a rash and negligent manner in the same direction and hit against the deceased motorcycle. Due to the sudden hit, both the rider as well as the pillion rider of the motorcycle were thrown away and sustained multiple grievous injuries all over their bodies. In spite of treatment, the said Murugesan died on 02.02.2018 and hence the appellants filed the claim petition claiming compensation against the respondents.

4. The 1st respondent remained ex parte before the Tribunal.

5. The 2nd respondent filed counter statement denying the averments made in the claim petition including the manner of accident. The deceased alone rode the motorcycle under the influence of alcohol in a rash and negligent manner and caused the accident. The deceased did not wear helmet at the time of accident and thereby violated the policy conditions. The appellant has not impleaded the owner and insurer of the TVS XL and



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hence the claim petition is bad for non-joinder of necessary parties. The 2nd respondent denied the age, avocation and income of the deceased. The total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st appellant examined herself as PW1 and one Gurusamy, eye-witness to the accident was examined as PW2. Nine documents were marked as Exs.P.1 to Exs.P.9. On the side of the respondents, Dr.V.Balaji was examined as RW1 and Accident Register was marked as Ex.R1.

7. The Tribunal after considering the evidence and documents filed on the side of the appellants as well as respondents, held that the accident occurred due to the rash and negligent riding by the rider of the bike bearing Regn.No.TN37 BY 4340, fixed 75% negligence on the part of the rider of the bike and 25% on the deceased, rider of the TVS XL bearing Regn.No.TN39 BW 0816 for not possessing valid licence and not wearing helmet at the time



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of accident. The Tribunal directed the 2nd respondent / Insurance company to pay 75% of the award amount, i.e. Rs. 15,90,000/- as compensation to the appellants.

8. Challenging the award of the Tribunal fixing 25% negligence on the part of deceased, the appellants have filed the instant appeal.

9. The learned counsel appearing for the appellants submitted that the Tribunal erred in fixing the negligence on the deceased at 15% for not wearing helmet and 10% for not possessing valid driving licence at the time of accident in the absence of any evidence let in by the second respondent/insurance company to prove the same. The learned counsel further submitted that the manner of accident would go to show that no contributory negligence can be fixed for not possessing valid driving licence at the time of accident. The Tribunal having found that the accident occurred only due to the negligence of the offending vehicle which is also a two-wheeler, erred in fixing contributory negligence on the deceased. The



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Tribunal erred in fixing the notional income of the deceased as Rs.10,000/- per month when the appellants have claimed that the deceased was working in a power loom. The accident had taken place in the year 2017 and the Tribunal ought to have fixed Rs.15,000/- per month as notional income of the deceased and prayed for enhancement of compensation.

10. Per contra, the learned counsel for the 2nd respondent / Insurance Company contended that the Hon'ble Apex Court and this Court had consistently taken a view for non-possession of driving licence and not wearing helmet, 20% contributory negligence would be just and reasonable. The learned counsel further submitted that the appellants failed to prove that the avocation and income of the deceased. In the absence of any documentary evidence, the notional income fixed by the Tribunal at Rs.10,000/- per month is not meagre and prayed for dismissal of the appeal.

11. Though notice has been served on the first respondent and his name has been printed in the cause list, there is no representation for him either in



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person or through counsel.

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12. Heard the learned counsel appearing for the appellants as well as
2nd respondent and perused the materials available on record.



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13. The questions involved in the instant appeal are -

- (i) whether the Tribunal is right in fixing 25% contributory negligence on the part of the deceased ;
- (ii) whether the quantum of compensation awarded by the Tribunal is just and reasonable.

14 (i). As regards the first question, from the materials on record, it is seen that the deceased did not possess valid driving licence at the time of accident. Admittedly, he did not wear helmet at the time of accident. Though it is seen from Ex.R1-Accident Register that the deceased smelt of alcohol, there is no evidence to suggest that he was under the influence of alcohol. Considering the facts and circumstances of the case and the view taken by the Hon'ble Apex Court and this Court in number of cases, this Court is of the view that it would be reasonable to fix 20% contributory negligence on the deceased for not possessing driving licence and not wearing helmet at the time of accident.



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WEB COPY 14 (ii) In so far as the quantum of compensation is concerned, it is seen that the only dispute is with regard to the notional income fixed by the Tribunal. The accident took place in the year 2018. The appellants have established the avocation of the deceased who was survived by his wife, three minor children and his mother. Considering the age and avocation of the deceased, cost inflation index and the year of accident, this court is of the view that it would be reasonable to fix the notional income of the deceased as Rs.14,000/- per month. The deceased was aged 36 years at the time of accident. The multiplier applicable is 15. There are four dependents of the deceased. By applying multiplier 15, adding 40% towards future prospects and deducting 1/4th towards personal expenses of the deceased, the compensation under the head loss of income is calculated as follows -

$$14,000 + 5600 (14000 \times 40\%) \times 12 \times 15 \times \frac{3}{4} = 26,46,000/-$$

Thus, the compensation awarded by the Tribunal is enhanced from



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Rs.21,20,000/- to Rs.28,76,000/-, break-up as follows -

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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	18,90,000/-	26,46,000/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Damages to clothes	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	40,000/-	40,000/-	Confirmed
5.	Parental Consortium	1,20,000/-	1,20,000/-	Confirmed
6.	Filial Consortium	40,000/-	40,000/-	Confirmed
	Total	21,20,000/-	28,76,000/-	
	Less: Contributory negligence fixed on the deceased	5,30,000/- (25%)	5,75,200/- (20%)	
	Net compensation payable to the appellants	15,90,000/-	23,00,800/-	Enhanced by Rs.7,10,800/-

The interest awarded by the Tribunal @ 9% is hereby reduced to 7.5% per annum.

15. In the result, this Civil Miscellaneous Appeal is partly allowed and



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the compensation awarded by the Tribunal at Rs.21,20,000/- is hereby enhanced to Rs.28,76,000/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The second respondent/Insurance Company is directed to deposit Rs.23,00,800/-, being 80% of the award amount (after deducting 20% contributory negligence on the part of the deceased) along with proportionate interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellants 1 & 5 are permitted to withdraw their share of the award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor appellants 2 to 4 are directed to be deposited in any one of the Nationalised Bank, till the minors attain majority. However, the 1st appellant, mother of the minor appellants is permitted to withdraw the accrued interest, once in three months. The appellants are directed to pay necessary court fee on the enhanced amount if any. No costs.



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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

SUNDER MOHAN, J

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To

1. The Special District Judge,
Motor Accident Claims Tribunal,
Erode District.

2. The Section Officer,
VR Section,
High Court,
Madras.

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