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C.M.A. No. 2905 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2905 of 2013

1. Kavitha Bharathi
 2. Minor T. Nithin,
[Minor appellant represented by his guardian
viz., Kavitha Bharathi, the 1st appellant herein]
 3. Renukadevi
 4. M. Palanisamy
- ... Appellants /Petitioners

Vs.

1. Eswaramurthy
 2. Cholamandalam M/s General
Insurance Company Ltd
Branch office at Dare House
2nd Floor, NSC Bose road
Chennai
- ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 18.02.2013 passed in M.C.O.P. No. 1123 of 2009 on the file of the Motor Accident Claims Tribunal, Dharapuram.

For Appellants	:	Mr. V. Regunathan
For R1	:	No Appearance
For R2	:	Mr. N. Vijayaraghavan



JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimants for enhancement of compensation and seeking to set aside 50% contributory negligence fixed by the Tribunal against the deceased person in the Award passed in M.C.O.P. No.1123 of 2009, dated 18.02.2013, on the file of the Motor Accident Claims Tribunal, Dharapuram.

2. For the sake of convenience, the parties are referred herein according to their litigative status and ranking before the Tribunal.

3. The case of the claimants is that on 03.07.2009 at about 7:30pm, the deceased namely, Anand was riding his two-wheeler along with his friends namely Manoj and Dinesh Kumar bearing Registration No. TN-33-AH-9594 from Palladam to Udumalai road with due care and caution on the left hand side of the road. While the two-wheeler reached near Appliampatti (Div.), Karaithottam, a car bearing Registration No. TN-39-AB-4050 driven by the driver in rash and negligent manner and while over-taking a van across the right hand side of the road, dashed against the two-wheeler, which resulted in causing serious injuries to the deceased Anand and others.



Subsequently, the deceased was succumbed to death on the way to hospital.

In this regard, a criminal case was also registered against the driver of the car which belongs to the first respondent. Hence, the claimants have filed a claim petition U/s. 166 of the Motor Vehicles Act, 1988 seeking compensation for a sum of Rs.10,00,000/-.

4. The first respondent who is the owner of the car has not contested the claim before the Tribunal and was remained ex-parte. The second respondent, Insurance Company has contested the claim and filed counter and contented that the deceased herein was not having valid driving licence to ride the two-wheeler at the time of accident and also three persons were travelling in the two-wheeler, which is a clear violation of policy conditions and rules. He further contended that the claim made by the claimants under various heads are also on the higher side and also there is no negligence on the part of the first respondent driver and prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the petitioner, P.W.1 to P.W.3 were examined and Exs.P.1 to P.12 were marked, on the side of the



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respondent no oral and documentary evidence marked.

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6. Based on the evidences placed on record, the Tribunal has considered and held that both the driver of the car and driver of the two-wheeler are responsible for the accident and the contributory negligence fixed in the ratio of 50:50. The Tribunal has quantified the compensation and awarded Rs.7,16,000/- as compensation in which the respondents were directed to pay 50% of the compensation (i.e.,) Rs.3,58,000/- to the claimants.

7. Aggrieved over the finding of the Tribunal that the deceased has also contributed to the accident and also for seeking enhancement of compensation, the claimants have filed this appeal.

8. The learned counsel for the claimants submitted that the Tribunal has wrongly held that the deceased, rider of the two-wheeler has also contributed to the accident, which is not based on any evidence, prays to set aside the same. Further, argued that the compensation awarded under various heads are on the lower side and no compensation was awarded



under the head future prospects, hence prays to allow the appeal.

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9. The learned counsel for the Insurance Company submitted that the Tribunal based on the evidences placed on record has found that three persons were travelled in the two-wheeler, which contributed to the accident. The Tribunal has also rightly held that the deceased is also responsible for the accident and hence awarded compensation by fixing 50% of contributory negligence to the claimant. He relied on the judgment of this Court in ***Branch Manager, Tamil Nadu State Transport Corporation, Pudukkottai vs. Marimuthu and 2 others [C.M.A. (MD) No358 of 2016, dated 04.02.2021]***, to support his case that, three persons travelling in a two wheeler is violation of policy condition and it contributed to the accident. The learned counsel has further contended that the award of compensation granted in other heads are also just, fair and reasonable and there is no need for enhancement of compensation.

10. I have considered the submissions made on both sides and perused the materials available on record.



11. The Tribunal has appreciated the evidence of P.W.2, who is the eye-witness to the occurrence and held that the driver of the car while overtaking the vehicle, hit on the two-wheeler of the deceased. The Tribunal has taken note of the fact that the driver of the car pleaded guilty in the criminal case registered against him. Thereafter, the Tribunal on the basis of number of persons travelled in the two-wheeler, fixed contributed negligence to the extent of 50% on the side of the deceased.

12. The judgment made by the Hon'ble Apex Court in *Mohammed Siddique and another vs. National Insurance Company Limited and others [2020ACJ751]*, was taken into consideration by the Madurai Bench of this Court, wherein it is held that, the act of riding of three persons in a two-wheeler is amount to negligent or not, to be decided on the facts and circumstances of each cases. In this case, the evidences placed on record shows that three persons travelled in the two-wheeler and they were on the left hand side of the road, while the driver of the car overtaking a van, hit on the two-wheeler. The rider of the two wheeler ridden the vehicle on the left side of the road and the driver of the car has crossed the middle line of the road and extended to opposite side and dashed against the two wheeler.



Similarly, it is also admitted case that the driver of the car pleaded guilty before the Criminal Court. Hence, this Court is of the view that the Insurance Company is not entitled to claim that the driver of car is not responsible for the accident.

13. In this case, no contra evidence to prove the fact much less than the contributory negligence has been produced to show that since three persons travelled in the vehicle, the rider has lost his control or was not able to effectively drive the same which resulted in accident. I am of the view that the finding given by the Tribunal fixing liability against the rider of the two-wheeler is not based on any evidence and same is not sustainable hence, the finding of the Tribunal fixing contributory negligence is hereby set aside.

14. As far as the quantum of compensation is concerned, the Tribunal has fixed the notional income of the deceased as Rs.4,000/- per month, the accident was taken place in the year of 2009 i.e., on 03.07.2009. This Court is of the view that the notional income fixed by the Tribunal requires modification since the same is not in accordance with the norms



followed by this Court and accordingly, this Court fixes Rs.6,000/- per month as the monthly income of the deceased. The Tribunal has not awarded any amount towards future prospectus of the deceased and as per the Judgment of the Hon'ble Apex Court in ***National Insurance Company Ltd., vs. Pranay Sethi and others*** reported in **[2017 (16) SCC 680]** the claimants are entitled 40% future prospects. The deceased was aged about 23 years as per the driving licence – Ex.P9, the applicable multiplier is '18' and after deducting 1/3rd for his personal expenses the loss of income arrived at Rs.12,09,600/- [6000 + 2400 (40% of 6000) x 12 x 18 x 1/3].

15. The Tribunal has awarded of Rs.60,000/- under the head loss of love and affection, as per the judgments of the Hon'ble Apex Court in ***United India Insurance Co. Limited v. Satinder Kaur and Ors.*** **[MANU/SC/0500/2020 : (2021) 11 SCC 780]** and ***Magma General Insurance Co. Ltd., vs Nanu Ram*** **[2018 ACJ 2018]**, the claimants are entitled only for consortium, which includes loss of love and affection, accordingly, the claimants are entitled to get are entitled to get Rs.40,000/- each under the head loss of consortium. The claimants are also entitled for Rs.15,000/- each under the head loss of estate and funeral expenses. The



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compensation awarded under the head funeral expenses includes transportation expenses, hence the award of Rs.3,000/- towards medical transportation is hereby cancelled.

16. Accordingly the compensation awarded by the Tribunal under various heads are hereby 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	6,48,000/-	12,09,600/-	Enhanced
2.	Loss of love & affection and Loss of Estate / modified to Loss of Consortium	60,000/-	1,60,000/-	Enhanced
3.	Funeral Expenses	5,000/-	15,000/-	Enhanced
4.	Loss of estate	---	15,000/-	Granted
4.	Medical transportation	3,000/-	---	Cancelled
	Total	7,16,000/-	13,99,600/-	Enhanced

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.7,16,000/- is hereby enhanced to **Rs.13,99,600/- [Rupees Thirteen Lakhs Ninety Nine Thousand and Six Hundred only]** together with interest at the rate of



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7.5% per annum from the date of filing of claim petition till the date of realisation. The second respondent-Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1123 of 2009, on the file of the Motor Accidents Claims Tribunal, Dharapuram. On such deposit the claimants are permitted to withdraw their respective share of the award amount, now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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1. The Motor Accident Claims Tribunal,
Dharapuram.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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K. RAJASEKAR,J.

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