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C.M.A.No.1496 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1496 of 2023

1.Atthur Subbalakshmi
2.Mucheli Revathi
3.J.Dhanalakshmi
4.Rayavarapu Geetha
5.A.Saritha

... Appellants

Versus

1.P.Jayalakshmi
2.Cholamandalam MS General Insurance Co., Ltd.,
Dare House, 2nd Floor, NSC Bose Road,
Chennai – 600 001.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, seeking to set aside the judgment and decree dated 25.07.2022 passed in M.C.O.P. No.3602 of 2020, by the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellants : Mr.G.Balakrishnan

For R1 : No Appearance

For R2 : Ms.R.Sreevidhya



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JUDGMENT

WEB COPY This appeal has been filed by the appellants/claimants seeking enhancement of the compensation awarded by the Tribunal in M.C.O.P. No.3602 of 2020 dated 25.07.2022.

2.The claim petition was filed stating that on 08.03.2020, at about 14.30 hours, while the deceased was riding a motorcycle bearing registration No.AP06-M-4687, at Gajulamandyam Four Road Junction, Renigunta Mandal, Puthalapattu, Naidupeta NH, Tirupathi Urban, Andra Pradesh, a lorry bearing registration No.AP26 Y 5855 driven by its driver in a rash and negligent manner lost its control and dashed against the motorcycle due to which the rider of the motorcycle sustained head injury and died on the spot.

3.The 2nd respondent/Insurance Company filed a counter denying all the averments made in the claim petition and stated that the deceased did not have valid driving license and was not wearing helmet and thus contributed to the accident; that in any case, the claim was excessive.

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



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5.The appellants/claimants examined two witnesses on their side and marked Ex.P.1 to Ex.P.15. On behalf of the 2nd respondent/Insurance Company no witness was examined. However, they have marked Ex.R1/rough sketch.

6.The Tribunal after considering the oral and documentary evidence held that the deceased was liable for contributory negligence to an extent of 25% as he did not possess valid driving license and also did not wear helmet at the time of accident. The Tribunal fixed the notional income of the deceased as Rs.8,000/- per month and awarded total compensation of Rs.4,53,900/- after deducting 25% towards contributory negligence.

7.The learned counsel for the appellants/claimants would submit that the notional income fixed by the Tribunal at Rs.8,000/- per month for the accident that took place in the year 2020 is meagre that the contributory negligence fixed by the Tribunal at 25% is erroneous; and that the compensation awarded by the Tribunal at Rs.20,000/- each towards loss of consortium for five claimants, is contrary to the decision of the Hon'ble Supreme Court in the case of *Sarla Verma & others vs.*



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Delhi Transport Corporation & another reported in ***2009 (2) TNMAC 1***

SC and hence, prayed for enhancement of compensation.

8.Though notice has been served, none has entered appearance on behalf of 1st respondent.

9.The learned counsel appearing for the 2nd respondent/Insurance Company, per contra submitted that the award of compensation under all heads is just and reasonable and there is no reason to interfere with the same. The deceased was aged about 59 years at the time of accident and hence, the notional income taken by the Tribunal at Rs.8,000/- per month, in the absence of any evidence to establish the income is correct. The Learned counsel therefore submitted that there is no reason to interfere with the award passed by the Tribunal and prayed for dismissal of the appeal.

10.This Court on perusal of the award passed by the Tribunal and on hearing the submission on either parties, finds that the Tribunal had fixed 25% contributory negligence on the deceased. The evidence disclosed that the deceased was not holding a valid driving license and



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did not wear helmet. The Tribunal, considering the same, ought to have fixed 20% contributory negligence on the part of the deceased as per the judgment of this Court in the case of ***C.M.A.No.3177 of 2021 and C.M.P.No.18012 of 2021 dated 13.10.2020 and National Insurance Co. Ltd., Vs. Thangadurai and Others*** reported in ***2018 (2) TNMAC 168 DB***. Hence, this Court is of the view that the contributory negligence for the rider of the two wheeler can be fixed at 20%.

11.As regards the quantum of compensation, this Court finds that the notional income fixed by the Tribunal at Rs.8,000/- per month is very low. The deceased was doing textile business as per the evidence of the 1st claimant/wife of the deceased. Considering the cost inflation index, the avocation of the deceased and the accident took place in the year 2020, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.12,000/- per month. The deceased was aged about 58 years at the time of accident and hence he is entitled to 10% future prospects and the multiplier applicable is 9.



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12.It is also seen that the Tribunal has considered only the 1st appellant/1st claimant as dependent of the deceased as the appellant 2 to 5/claimants 2 to 5 are daughters of the deceased and all were married and the Tribunal therefore reduced 50% towards his personal expenses. This Court feels that the said approach is not correct. Though the appellants 2 to 5/claimants 2 to 5 are married, they cannot be considered to be totally independent. The deceased would have certainly helped his daughters financially. Hence, this Court considering the facts of the case, is of the view that the deduction of 1/3rd of the income towards personal expenses would be just and reasonable. Hence, the award under the loss of income / dependency has to be as follows:

$$\text{Rs.12,000/-} + 10\% = 13,200 \times 12 \times 9 \times \frac{2}{3} = \text{Rs.9,50,400/-}$$

13.Further, the award under the loss of consortium has to be enhanced from Rs.1,00,000/- to Rs.2,00,000/-. All the claimants are entitled to Rs.40,000/- each. The compensation awarded by the Tribunal under the other heads are just and remains unaltered. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income/Dependency	4,75,200	9,50,400	Enhanced
2.	Loss of Estate	15,000	15,000	Confirmed
3.	Loss of Consortium	1,00,000	2,00,000	Enhanced
4.	Funeral Expenses	15,000	15,000	Confirmed
	Total	6,05,200	1,180,400	Enhanced
	After deducting contributory negligence	4,53,900 (25% Deducted)	9,44,320 (20% Deducted)	Enhanced by Rs.4,90,420/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,53,900/- is hereby enhanced to Rs.9,44,320/- 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 2nd 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 (6) weeks from the date of a receipt of copy of this



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Judgment. On such deposit the 1st appellant is permitted to withdraw a sum of Rs.5,44,320/- and the appellants 2 to 5/claimants 2 to 5 are permitted to withdraw a sum of Rs.1,00,000/- each along with proportionate interest and costs, less the amount if any, already withdrawn. The appellants are directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

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rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1.The Chief Judge,
Court of Small Causes, Chennai.

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



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SUNDER MOHAN, J.

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