



C.M.A.No.549 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.549 of 2022

and

C.M.P.No.3919 of 2022

The Branch Manager,
United India Insurance Company Ltd.,
50A, Pallivasal Street,
Perambalur.

... Appellant

Vs

1.Alamelu
2.Pitchaipillai
3.Pannerselvam

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.03.2020 made in M.C.O.P.No.675 of 2016 on the file of the Motor Accident Claims Tribunal (Sessions Judge), Perambalur.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.S.P.Yuvaraj, for RR1 & 2
Mr.K.Selvarangan, for R3



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J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the award dated 03.03.2020 passed by the Motor Accident Claims Tribunal (Sessions Judge), Perambalur in MCOP.No.675 of 2016.

2. The appellant / Insurance Company is the second respondent in MCOP.No.675 of 2016, on the file of the Motor Accident Claims Tribunal (Sessions Judge), Perambalur.

3. The respondents 1 and 2 herein who are the parents of the deceased Mayavel had filed the claim petition stating that on 17.05.2016 at about 10.30 p.m., while the deceased was travelling as a pillion rider in the motorcycle bearing Registration No.TN-46-S-9687 from Chennai to Trichy NH-45 road near Sengunam Service road, the rider of the motorcycle bearing Registration No. TN-46-P-4429, without following the traffic rules, rode the same in a rash and negligent manner and dashed against the motorcycle in which Mayavel was riding as pillion rider and caused the accident. As a result, the said Mayavel succumbed to the injuries. Hence,



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respondents 1 and 2 claimed compensation against the appellant and the third respondent.

4. The third respondent herein / first respondent in the claim petition remained ex parte before the Tribunal.

5. The appellant/Insurance Company filed a counter denying the averments made in the claim petition stating that the rider of the motorcycle in which the deceased travelled as a pillion rider rode the same in a rash and negligent manner, without possessing driving license, suddenly lost control and invited the accident; in any case the claim is excessive and prayed for allowing this appeal.

6. Before the Tribunal, the first respondent examined herself as P.W.1 and one Ragul, eye witness to the accident was examined as P.W.2. Nine documents were marked as Ex.P1 to Ex.P9. On behalf of the appellant/Insurance Company, two witnesses were examined as R.W.1 and R.W.2 and marked two documents as Ex.R1 and Ex.R2.



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7. The Tribunal after considering the evidence and documents filed on either side, held that the accident occurred due to rash and negligent riding of the third respondent herein and directed the appellant to pay a sum of Rs.30,54,000/- as compensation to the respondents 1 and 2 at the first instance and recover the same from the third respondent owner of the offending vehicle, for violation of policy conditions.

8. Aggrieved by the said order, the appellant/Insurance Company had preferred the instant appeal challenging the liability as well as quantum of compensation awarded by the Tribunal.

9. The learned counsel for the appellant submitted that though there is evidence to show that the deceased / the rider of the two wheeler did not wear helmet at the time of accident and also did not possess a valid two wheeler license, the Tribunal did not fix any contributory negligence on the part of the deceased. The learned counsel further submitted that the evidence of eye witness examined on the side of the respondents does not inspire confidence. The eye witness had admitted in his cross examination that he



went to the scene of occurrence one and half minutes after the accident had taken place and therefore, he could not have been the eye witness to the accident. The said witness P.W.2 had also admitted that he was not aware whether it was a head on collision. Therefore, the learned counsel submitted that the finding of the Tribunal holding the rider of the offending two wheeler was liable for negligence is erroneous. The learned counsel also submitted that as regards quantum, the Tribunal had deducted 1/3rd towards personal expenses, although the deceased was a Bachelor and ought to have deducted 50% towards his personal expenses; and that the notional income fixed by the Tribunal at Rs.15,000/- in the absence of any evidence to establish the same is on the higher side and prayed for allowing this appeal.

10. The learned counsel for the respondents 1 and 2 per contra submitted that the appellant had not examined any witness to contradict the evidence of P.W.2; that in the absence of any evidence let in by the respondents, it cannot be said that the deceased also contributed to the accident; and that in order to fix contributory negligence, there must be evidence and it cannot be inferred. As regards compensation, the learned counsel submitted that the notional income fixed by the Tribunal is just and



reasonable and no interference is called for and prayed for dismissal of the appeal.

11. Heard the learned counsel for the third respondent who submitted that he is adopting the arguments of the learned counsel for the appellant.

12. The question involved in the instant appeal are as follows:

- a) Whether the Tribunal was right in fixing the entire liability on the rider of the offending vehicle?
- b) Whether the compensation awarded by the Tribunal is just and reasonable?

13. On perusal of the records, this Court finds that the respondents have examined P.W.2 as an eye witness. Though P.W.2 had admitted that he went to the accident spot one and half minutes after the accident, it is seen that the respondents have not let in evidence to prove the manner of accident. Besides P.W.2, the respondents have also marked a copy of the FIR in which it is stated as to how the accident took place. The respondents ought to have examined witnesses to show that the deceased



also contributed to the accident. In the absence of any evidence, contributory negligence cannot be inferred. However, this Court finds that the deceased did not wear helmet and also the respondents could not produce the license of the deceased. This Court had consistently taken a view that in the absence of valid license and for not wearing helmet, contributory negligence has to be fixed on the deceased. In the facts and circumstances of the case, this Court is of the view that 15% contributory negligence has to be fixed on the deceased for the aforesaid violations. Since the driver of the offending vehicle also did not possess a valid driving license, the Tribunal directed the appellant to pay compensation at the first instance and recover the same from the third respondent owner of the vehicle. The said finding does not call for any interference and the same is confirmed.

14. As regards quantum, this Court finds that the notional income fixed by the Tribunal at Rs.15,000/- is just and reasonable. The respondents 1 and 2 have marked Ex.P7 to show that the deceased had a BSE Computer Science degree. P.W.1 had stated that he was working as a Computer designer in a private concern. Considering the above facts, the notional



income fixed by the Tribunal does not require any interference. However, this Court finds that while computing the loss of income, the Tribunal had deducted 1/3rd towards personal expenses of the deceased. The deceased was a bachelor at the time of accident and hence, 50% has to be deducted towards his personal expenses. The deceased was aged 22 years at the time of accident. Hence, the respondents 1 and 2 are entitled to 40% towards future prospects. The multiplier applicable is '18'. Hence, the loss of income has to be Rs.15,000+6,000(15,000+40%)x12x18x1/2=Rs.22,68,000. The respondents 1 and 2 are entitled to filial consortium at Rs.40,000 each. The compensation awarded by the Tribunal under other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is reduced from Rs.30,54,000/- to Rs.20,21,300/-, break-up as follows -

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	30,24,000/-	22,68,000/-	Reduced
2.	Consortium	-	80,000/-	Granted
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed



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	Total	30,54,000/-	23,78,000/-	
	Less 15% contributory negligence	-	3,56,700/-	Reduced by Rs.10,32,700/-
	Net Compensation		20,21,300/-	

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.30,54,000/- is hereby reduced to Rs.20,21,300/- 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 appellant/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 Judgment at the first instance and recover the same from the third respondent herein. On such deposit, the respondents 1 and 2 are permitted to withdraw their share of the award amount equally along with proportionate interest and costs, less the amount if any, already withdrawn. Consequently, connected miscellaneous petition is closed. The appellant / Insurance Company is permitted to withdraw the excess amount lying in deposit to the credit of MCOP.No.675 of 2016, if the entire award amount has already been



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deposited by them. No costs.

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Index: Yes/No
Neutral Citation: Yes/No
AT

To

- 1.The Motor Accident Claims Tribunal (Sessions Judge),
Perambalur.
- 2.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

AT

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