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C.M.A.No.1411



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.1410 of 2022

Katari Muniswamy (died)

1.Katari Prudhvi

2. Katari Sai Krishna

... Appellants

Vs.

1.P.Udhayakumar

2. The New India Assurance Co. Ltd.

Divisional Office, 6th floor

Parry's corner, George Town

Chennai-600 001.

Branch Office

166, MRN Towers

J.N.Road, V.M.Nagar

Tiruvallur – 602 001.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying against the judgment and decree dated 24.03.2021 made in M.C.O.P.No.126 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Court No.I to deal with MCOP cases, Tiruvallur.



For Appellants : Mr.M.Lokesh

For R1 : No appearance

For R2 : Mr.T.Jayaraman

JUDGMENT

The appeal is filed by the claimants against the award dated 24.03.2021 made in M.C.O.P.No.126 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Court No.I to deal with MCOP cases, Tiruvallur.

2. The brief facts leading to the appeal are that, on 27.10.2017 at about 14.00 hours, while the deceased Katari Ratnamma along with her husband was travelling in a Auto bearing Registration No.AP 26 AD 7841, the driver of the lorry bearing Registration No.TN 46 F 2489 belonging to the 1st respondent, drove the same in a rash and negligent manner, hit against the auto, thus causing the death of Katari Ratnamma. The husband of the deceased also sustained injuries. According to the claimants, the deceased was aged 40 years at the time of accident and as a self-employed, she was earning a sum of Rs.20,000/- per month. Therefore, the husband and sons of the deceased filed the Claim Petition seeking a sum of Rs.25,00,000/- as compensation.



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3. Before the Claims Tribunal, the 1st respondent, owner of the lorry remained *exparte*. The Claim Petition was contested by the 2nd respondent/Insurance Company. The 2nd respondent filed a detailed counter denying all the averments made in the Claim Petition apart from disputing the negligence, liability and quantum of compensation.

4. Before the Claims Tribunal, in support of their claim, the husband of the deceased examined himself as P.W.1 and Exs.P1 to P10 were marked. On the side of the 2nd respondent, one witness was examined as R.W.1 and four documents were marked as Exs.R1 to R4.

5. The Claims Tribunal, on an assessment of the entire evidence on record, returned a finding of negligence against the driver of the lorry belonging to the 1st respondent, assessed the compensation at Rs.20,70,300/- along with 7.5% interest and mulcted the entire liability on the 1st respondent, owner of the lorry because the lorry was driven by its cleaner, who had no driving license and also because he was drunk at the time of accident. The Tribunal on the facts of the case did not order pay and recovery. The claimants have therefore filed the present appeal challenging the finding of the Tribunal on liability and also quantum of compensation.



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6. Learned counsel appearing for the appellants/claimants submitted that the deceased who was travelling in the auto at the time of accident and was a third party and hence, the Tribunal ought to have directed the 2nd respondent/Insurance Company to pay and then recover from the 1st respondent. The learned counsel referring to the judgments of the Hon'ble Supreme Court in the case of **Parminder Singh vs. New India Assurance Company Limited and others** reported in **2019 (7) SCC 217** and in the case of *Shamanna and others vs. The Divisonal Manager, the Oriental Insurance Company Limited and others* reported in **(2018) 9 SCC 650** contended that the Tribunal erred in not ordering pay and recovery. Learned counsel further submitted that the Tribunal erred in adding 25% towards future prospects overlooking that the deceased was aged 40 years and therefore, 40% was to be added towards future prospects. The counsel further submitted that the sons of the deceased were entitled to Rs.40,000/- each towards loss of love and affection as the husband of the deceased died before filing Claim Petition.

7. Learned counsel appearing for the 2nd respondent/Insurance Company on the other hand submitted that this is a clear case of violation of policy conditions as the cleaner of the lorry, who drove the vehicle, was not only in a drunken state, but also did not possess valid driving license at the time of accident. According to the counsel, the Tribunal was justified in mulcting the entire liability on the owner of the lorry. The counsel therefore submitted that the award of the Tribunal was fair, just and reasonable and did not call for any interference in the appeal.



8. Though notice was served on the 1st respondent and his name is printed in the cause list, none appears on his behalf.

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9. I have heard the learned counsel appearing for the appellants and learned counsel for the 2nd respondent/Insurance Company and perused the entire materials placed on record.

10. It is seen from the records that the Tribunal has rightly returned a finding of the negligence against the driver of the lorry belonging to the 1st respondent. The Tribunal found that there was violation of policy conditions as the cleaner of the lorry who drove the vehicle, did not possess valid driving license at the time of accident. The Tribunal mulcted the entire liability on the 1st respondent, owner of the lorry on the premise that both the lorry driver as well as cleaner who drove the lorry were in an intoxicated condition at the time of accident. The deceased was an innocent passenger in the auto rickshaw and it was the negligence of the cleaner of the lorry, who drove the vehicle in a drunken state that caused her death. Considering the judgment of the Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Swaran Singh and others** reported in (2004) 3 SCC 297, I am of the view that the Insurance Company can be directed to pay and then recover the compensation amount from the owner.



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11. According to the claimants, the deceased was earning Rs.20,000/- per month doing hotel business at the time of the accident. The Tribunal in the absence of any material in support of her income, assessed the notional income of the deceased at Rs.13,302/- per month. The learned counsel for the appellants is right in submitting that the Tribunal ought to have added 40% towards future prospects as the deceased was aged 40 years at the time of accident. If 40% is added towards future prospects i.e. Rs.5,320/- (Rs.13,302/- X 40/100), the income would be Rs.18,622/- (Rs.13,302/- + 5320). If 1/3rd is deducted towards personal expenses of the deceased, it comes to Rs.12,415/- (18622 - 6207). After applying multiplier '15', the compensation towards loss of dependency is arrived at Rs.22,34,700/- (Rs.12,415/- X 12 X 15).

12. The Tribunal awarded Rs.40,000/- towards loss of consortium to the husband of the deceased. As rightly submitted by the learned counsel for the appellants, the sons of the deceased, claimants 1 & 2 are entitled to Rs.40,000/- each towards loss of consortium. The award of the Tribunal under the heads “loss of estate” and “funeral expenses” are just and reasonable and the same are therefore, confirmed. A sum of Rs.5,000/- granted by the Tribunal towards transport charges to hospital is not warranted.

13. In view of the above discussions, the award of the Tribunal is modified as



follows:

<i>S.No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1.	Loss of dependency	Rs.19,95,300/-	Rs.22,34,700/-
2.	Loss of estate	Rs.15,000/-	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-	Rs.80,000/- (Rs.40,000/- X 2)
4.	Funeral expenses	Rs.15,000/-	Rs.15,000/-
5.	Transport to hospital expenses	Rs.5,000/-	-
Total Compensation		Rs.20,70,300/-	Rs.23,44,700/- enhanced amount Rs.2,74,400/-

The appellants are entitled to enhanced compensation of Rs.23,44,700/- along with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

14. It is submitted by the learned counsel for the claimants that as the husband of the deceased, the 1st claimant died subsequent to passing of the award and before filing of the appeal, the apportionment of compensation may be ordered equally between the sons of the deceased.

15. The 2nd respondent/Insurance Company is directed to deposit the entire award amount now determined by this Court along with 7.5% interest and costs within a period of twelve weeks from the date of receipt of a copy of this judgment



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and then recover from the owner of the lorry, 1st respondent. On such deposit being made, the appellants/claimants, sons of the deceased shall be entitled to withdraw equally, by making proper application before the Tribunal.

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16. It is submitted by the learned counsel for the appellants that appeal was restricted to Rs.2,00,000/-. Therefore, the appellants are directed to pay the deficit Court fee for the balance enhanced amount. The Registry is directed not to draft the decree till the additional Court fee is received.

17. The appeal is accordingly partly allowed. There shall be no order as to costs.

19.06.2023

(1/2)

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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N.MALA.J.,



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To

1. The Special District Court No.I to deal with MCOP cases
Motor Accidents Claims Tribunal
Tiruvallur.

2.The Section Officer,
V.R.Section,
High Court, Madras.

C.M.A.No.1410 of 2022

19.06.2023
(1/2)