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C.M.A.No.2877 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2877 of 2021
and CMP.No.16532 of 2021

The Branch Manager,
M/s.United India Insurance Co. Ltd.,
No.22B, P.R.Sundaram Iyer Street,
Dharmapuri, Tamil Nadu 636 701.
C/o. The Divisional Manager,
United India Insurance Co. Ltd.,
Durga Bhavani Square,
Opposite Railway Station,
Denkanikottai Road, Hosur 635 109.

...appellant

Vs.

1. Mumtaj
2. S.Jayavel

...respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 03.09.2019 made in MCOP.No.336 of 2018 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Hosur.

For Appellant	: Mr.S.Arunkumar
For Respondents	
for R1	: Mr.P.A.Sudeshkumar
for R2	: Served - No Appearance



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J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN, J]

The Insurance Company is on appeal questioning the award of the Tribunal granting a sum of Rs.30,79,000/- for the death of one Mohammed Sherif in a road accident that occurred on 08.01.2018.

2. The claimant, who is the mother of the deceased, sought for a compensation contending that while her son was riding a motorcycle bearing Registration No.KA-03-HE-6077 along with one Nadheem as a pillion rider on the Hosur-Krishnagiri National Highway Road, the Lorry bearing Registration No.TN-34-D-3732 owned by the second respondent and insured with the appellant/Insurance Company, driven in a rash and negligent manner, hit against the two wheeler. As a result of the impact, the deceased fell down and was run over by the Lorry resulting in his instantaneous death. Contending that the deceased was a very bright student and was pursuing Bachelor of Computer Applications in MGR College, Hosur, the claimant assessed the compensation at Rs.68,40,000/-, but restricted the claim to Rs.50,00,000/-.



WEB COP 3. The Insurance Company resisted the claim contending that the Lorry was not responsible for the accident and the accident did not occur in the manner suggested by the claimant. It was contended that the two wheeler rider, viz., the deceased was responsible for the accident.

4. At trial, the claimant was examined as PW1 and one Nadheem, who is the pillion rider, was examined as PW2 and exhibits P1 to P13 were marked. On the side of the respondents, Final Report that was filed by the Police against the deceased was marked as Ex.R1. The Tribunal however concluded that the Lorry driver was responsible for the accident and fastened the entire liability on the Insurance Company. It assessed the compensation at Rs.30,79,000/-. The Tribunal adopting monthly notional income of the deceased at Rs.20,000/-, deducting 50% for personal expenses and applying multiplier at 18, arrived the Loss of Dependency at Rs.21,60,000/-. It also granted a sum of Rs.10,000/- for Love and Affection, Rs.20,000/- for Loss of Estate, Rs.10,000/- for Transportation and Rs.15,000/- for Funeral Expenses. That apart, the Tribunal added Future Prospects at Rs.8,64,000/- i.e., 40% of Rs.21,60,000/-.



5. Mr.S.Arun Kumar, learned counsel appearing for the appellant/Insurance Company would vehemently contend that though the Final Report was marked as Ex.R1 before the Tribunal indicating the deceased was responsible for the accident, the Tribunal has not considered the same. Such non-consideration has resulted in the Tribunal misdirecting itself and granting award in favour of the deceased.

6. Mr.P.A.Sudeshkumar, learned counsel appearing for the first respondent would however submit that the Tribunal has referred to the Final Report and also the contention of the Insurance Company and the failure to consider the Final Report will not vitiate the award.

7. We have considered the rival submissions. We are unable to agree with the submissions of the learned counsel appearing for the first respondent/claimant. Once the final report is filed and marked before the Tribunal, the Tribunal was duty bound to consider the effect of the same. We have perused the Final Report and it clearly indicates that the deceased was responsible for the accident. However the FIR has been lodged against the Lorry driver. PW2, the eyewitness has spoken about the accident. The same person had given a different version before the Police, which has resulted in



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the Final Report being filed against the deceased. We therefore deem it fit to apportion the negligence 50% each on the driver of the Lorry and the deceased.

8. We also find that the adoption of Rs.20,000/- as monthly income by the Tribunal is on the higher side. The deceased was only a student and considering the vagaries of employment, we fix the monthly notional income of the deceased at Rs.15,000/- and add 40% towards future prospects. Therefore, the Loss of Dependency works out to Rs.22,68,000/- $[(15,000 + 6,000) \times 1/2 \times 12 \times 18]$. Further, if a sum of Rs.40,000/- is added towards Love and Affection, Rs.10,000/- towards Transportation, Rs.15,000/- towards Funeral Expenses and Rs.20,000/- towards Loss of Estate, the total compensation comes to Rs.23,53,000/-. Since we have held that the deceased contributed 50% to the accident, the claimant would be entitled to 50% of the aforesaid sum, i.e., Rs.11,76,500/-, which is rounded off to Rs.12,00,000/-.

9. In fine, the appeal is partly allowed, the award of the Tribunal is modified granting a sum of Rs.12,00,000/- as compensation. The said compensation will carry interest at the rate of 6% from the date of petition



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till the date of payment. It is stated that 50% of the compensation as awarded by the Tribunal has already been deposited. Therefore, the Insurance Company is directed to deposit the remaining amount if any within a period eight weeks. On such deposit, the Tribunal will pay out the sum of Rs.12,00,000/- with 6% interest from the date of petition till the date of payment to the claimant and the remaining, if any, shall be paid over to the Insurance Company. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M.J.) (S.S.K.J.)
27.01.2023

Index : No
Speaking order: Yes
pvs

To
1. The Additional District Judge, Hosur/
Motor Accidents Claims Tribunal,
2. The Section Officer,
VR Section High Court, Madras.



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