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C.M.A.No.1480 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.06.2023

PRONOUNCED ON : 21.07.2023

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.M.A.No.1480 of 2018

1. A.Amudhavalli
2. M.Arumugam

... Appellants

- Vs -

1. M.Dhanasekaran
(Since R1 remained exparte before the Tribunal,
his presence may be dispensed with)

2. The United India Insurance Company Limited,
No.48, Arcot Road,
Saligramam, Chennai-93.

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 04.01.2018 and made in M.A.C.T.O.P.No.768 of 2016 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Tiruvallur at Poonamallee.

For Appellants : M/s.M.Malar
For R2 : Ms.R.Vijaya Kamala



C.M.A.No.1480 of 2018

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JUDGMENT

The parent of the deceased minor Hariharan has filed the instant appeal aggrieved by the order passed in M.C.O.P.No.768 of 2016 by the Motor Accidents Claims Tribunal, III Additional District Judge, Tiruvallur at Poonamallee, for the enhancement of compensation.

2. For the sake of convenience, the parties are referred to as per their ranks mentioned in the petition.

3. The short facts which give rise to the present appeal is that, the deceased minor Hariharan was a +2 student and aged about 17 years at the time of the accident. On 27.11.2016 at about 14.30 hours, when the deceased Hariharan, was travelling as a pillion rider in a Yamaha Motorcycle bearing Registration No.TN 12 Q 7033 in Minjur to Vandalur Road, near the Malayambakkam service road bus stop, the rider of the said motorcycle drove in a rash and negligent manner and hit against the iron fence. Due to such an accident, the deceased sustained fatal injuries and died on the spot. It is the specific submission of the petitioner that the accident had occurred only due to rash and negligent driving of the rider of the first respondent's motorcycle and



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hence the petitioner filed a petition claiming a compensation of Rs.12,00,000/-

4. The first respondent remained exparte.

5. The second respondent filed a counter statement stating that there is no valid enforceable driving license to the rider of the motorcycle. Therefore, there is a clear violation of the policy conditions, and thereby the Insurer is not liable to pay any compensation to the claimants. The respondent also denies the rash and negligent riding of the motorcycle.

6. Before the Tribunal, the first petitioner examined herself as PW1 and one Mr.T.Sivakumar was examined as PW2 and marked 10 documents as Exs.P1 to P10. On behalf of the respondents, Head Constable, one S.Muthukaruppusamy was examined as RW1 and marked one document as Ex.R1.

7. The Tribunal, based on the materials available on record and the



evidence, has observed that the accident had occurred due to the negligent riding of the rider of the Motorcycle and hence fixed the liability on the Insurance Company and awarded a total compensation of Rs.8,78,000/- with interest at 7.5% per annum from the date of petition. Further, on the finding that the rider of the motorcycle did not have a valid driving license, directed the second respondent to pay to the claimant and recover the same from the first respondent. Feeling aggrieved and dissatisfied with the quantum so awarded, the petitioners/claimants have preferred this appeal seeking enhancement of the compensation.

8. The learned counsel for the appellants would contend that the Tribunal has erred in awarding a meagre sum of Rs.8,78,000/- as against the claim of Rs.12,00,000/- made by the appellants / claimants. The learned counsel further submitted that the determination of a sum of Rs.3,000/- towards notional income is highly inadequate. It is also submitted that the amounts awarded towards other conventional heads are meagre and hence, the compensation awarded by the Tribunal needs interference at the hands of this Court by way of enhancement.

9. Per contra, the learned counsel for the second respondent would



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submit that, for the +2 student, the determination of a sum of Rs.6,000/-, as a notional income is very much reasonable and there is no scope for any enhancement of award amount. It is also the submission of the learned counsel for the respondent that the award of Rs.2,00,000/- towards loss of love and affection is contrary to the settled principles and hence seeks reduction of the same. Further, the learned counsel would contend that the Tribunal has passed the award in accordance with law and there are no reasons to interfere with the award and prayed for the dismissal of the appeal.

10. Heard the learned counsel appearing for the appellants and learned counsel appearing for the second respondent and perused the materials available on record carefully and meticulously.

11. In this case, the Tribunal after considering the evidence ultimately arrived at a conclusion that there was negligence on the part of the rider of the two wheeler bearing Registration No.TN 12 Q 7033, who was not holding a valid driving license at the time of the accident. The learned trial Judge in the impugned award has also permitted the second respondent to recover the amount from the first respondent after paying the award amount to the



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claimants. As such, there is no dispute in respect of the negligence and also in respect of non possession of an effective driving license by the rider of the two wheeler. Therefore, the issue now become narrow down and restricted only to the question of determination of just compensation.

12. With respect to quantum of compensation, it is seen that the mother of the deceased was examined as P.W.1, who deposed in her evidence that the deceased was aged about 17 years and a +2 student. In the absence of any documentary evidence towards income, the Tribunal fixed a sum of Rs.6,000/- per month as the notional income and deducted 1/2 of the income towards personal expenses of the deceased, by adopting 18 multiplier awarded a sum of Rs.6,48,000/- towards loss of dependency, which according to the petitioner is on the lower side.

13. In this case, by relying Ex.P4- Postmortem Certificate and Ex.P7- 10th mark sheet the Tribunal rightly fixed the age of the deceased as 17 years at the time of the accident. The only objection raised by the learned counsel for the petitioners is that the notional income fixed at Rs.6,000/- per month is highly inadequate. It is pertinent to mention here that the Hon'ble Supreme



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Court, in a case reported in *AIR 2019 (SC) 5625 (M.R.Krishnamurthi v. New India Assurance Co. Ltd and others)*, had determined the notional income as Rs.5,000/- for the +2 student for the accident that took place during 1988.

14. In the present case, the accident occurred in the year 2016. Taking note of the year of the accident, and in the back drop of the case of *M.R.Krishnamurthi* (as cited supra), this Court is of the view that fixing a sum of Rs.9,000/- towards notional income including future prospects, would be just and proper. The Tribunal has rightly fixed the multiplier as '18', by following the decision of the Hon'ble Supreme Court, reported in *2009 ACJ 1298 SC (Sarla Verma and others V. Delhi Transport Corporation and another)*. From the notional income of Rs.9000/- (including future prospects), the deceased being a bachelor 50% is to be deducted from the above multiplicand towards his personal expenses. Thus, the loss of dependency works out to Rs.9,72,000/- (Rs.9,000/- x 12 x 18 x 1/2). Accordingly, the compensation awarded by the Tribunal towards loss of dependency stands modified to Rs.9,72,000/-.

15. That apart, the Tribunal has awarded Rs.15,000/- towards funeral



expenses and Rs.15,000/- towards loss of estate, which, in the opinion of this Court, are just and reasonable and hence, the same need not be interfered with.

16. The Tribunal has awarded a sum of Rs.2,00,000/- (Rs.1,00,000/- each) towards loss of love and affection to the petitioners, which is contrary to the judgment of the Hon'ble Supreme Court, reported in **2017 (2) TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi & others)**. Hence, this Court, hereby modifies the same to the extent of Rs.80,000/- (Rs.40,000/- each) towards loss of love and affection.

17. Thus, the details of the modified compensation are as follows:

<i>S.No</i>	<i>Various Heads</i>	<i>Awarded by the Tribunal</i>	<i>Awarded by this Court</i>	<i>Award confirmed or enhanced or increased or reduced</i>
1.	Loss of dependency	Rs.6,48,000/-	Rs.9,72,000/-	Enhanced
2.	Funeral expenses of Hariharan	Rs.15,000/-	Rs.15,000/-	Confirmed
3.	Love and affection	Rs.2,00,000/-	Rs.80,000/-	Reduced
4.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
	Total	Rs.8,78,000/-	Rs.10,82,000/-	Enhanced



C.M.A.No.1480 of 2018

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18. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,78,000/- is hereby enhanced to Rs.10,82,000/- with interest at the rate of 7.5% per annum from the date of the petition till the date of deposit of the amount. The second respondent/ Insurance Company is directed to deposit the modified amount of compensation, as ordered above, along with interest and costs, after deducting the amount if any, already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment and thereafter, recover the same from the first respondent/ owner of the vehicle, as ordered by the Tribunal. On such deposits being made, the appellants 1 & 2 are permitted to withdraw their equal share on making proper application before the Tribunal. It is made clear that the appellants/claimants have to pay the appropriate Court fee, before receiving the awarded amount. No order as to the cost of this appeal.

21.07.2023

av

Index : yes/no

Speaking/Non Speaking Order

To

1. The III Additional District Court,
Motor Accident Claims Tribunal,
Tiruvallur @ Poonamallee.
2. The Section Officer,
V.R.Section, High Court, Madras.

C.KUMARAPPAN, J.



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Pre-Delivery Judgment
in
C.M.A.No.1480 of 2018

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