IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.08.2023

Coram

The Honourable Mr.Justice SUNDER MOHAN

C.M.A.No.898 of 2023

1.Sundari
2.Minor Lakshitha
Rep. by her Guardian/Mother Sundari
3.Mahalingam

...Appellants

Versus

1.Chandrasekar
2.Jaganathan
3.National Insurance Company Ltd.,
Rep. by its Branch Manager,
No.58, Rajaji Street,
Kangeyam, Tiruppur – 638 701.

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 23.01.2023 made in M.C.O.P.No.1363 of 2018 by the Motor Accident Claim Tribunal/Sub Court at Kangeyam, Tiruppur District.

For Appellants	:	Mr.M.Selvam for K.Venkateswaran
For Respondents – 1 & 2	:	Set e*x-parte*
For Respondent – 3	:	Mr.S.Vadivel

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellants/claimants seeking to enhance the compensation awarded by the Motor Accident Claim Tribunal/Sub Court at Kangeyam, Tiruppur District vide judgment and decree made in M.C.O.P.No.1363 of 2018 dated 23.01.2023.

2. The brief facts of the case are as follows:

On 19.09.2017 at around 7.30 p.m, when one Anandraj was riding a motorcycle bearing Registration No.TN 68 C 7812 from Kangeyam to Tiruppur Thenvadal Main Road, a car bearing Registration No.TN 01 H 5728 driven by the first respondent coming from the opposite direction hit the said motorcycle, as a result which, the accident occurred. In the accident, the said Anandraj sustained severe injuries and died on the spot. Aggrieved over the death of said Anandraj, his wife, daughter and father (appellants/claimants) had filed a claim petition in M.C.O.P.No.1363 of 2018 against the first respondent (driver of the offending vehicle), second respondent (owner of the offending vehicle) and the third respondent (insurer of the offending vehicle), claiming a sum of Rs.30,00,000/- as compensation.

3. The third respondent/Insurance Company (insurer of the offending vehicle) had filed its counter statement denying all the averments made by the appellants/claimants in the Claim Petition. In the counter statement, it is stated that the accident occurred only due to the negligence of the deceased Anandraj who suddenly crossed the road without giving any signal and also, without noticing the vehicle coming on the opposite direction; at the time of accident, the deceased Anandraj was not having a valid driving license and he was not wearing the helmet and hence, the third respondent/Insurance Company is not liable to pay compensation to the claimants and prayed for dismissal of the claim petition.

4. Before the Tribunal, on the side of the appellants/claimants, the first appellant examined herself as P.W.1 and one other witness was examined as P.W.2 and 13 documents were marked as Exs.P1 to P13. The respondents had neither examined any witness nor marked any document.

5. On appreciation of the oral and documentary evidence produced before it, the Tribunal arrived at the conclusion that the accident had occurred due to the rash and negligent driving of the first respondent as well

as deceased Anandraj; and fixed 80% contributory negligence on the first respondent and 20% contributory negligence on the deceased Anandraj; and directed the respondents to pay a sum of Rs.10,99,200/- as compensation to the appellants/claimants.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellants/claimants have preferred this appeal before this Court.

7. Mr.M.Selvam, learned counsel for the appellants/claimants submitted that though the deceased Anandraj was having a valid driving license at the time of accident, the Tribunal had erroneously fixed 20% contributory negligence on the deceased Anandraj on the ground that at the time of accident, he did not have a valid driving license and did not wear helmet. The learned counsel also submitted that the accident had occurred due to the rash and negligent driving of the first respondent and the Tribunal without considering the manner in which the accident took place, presumed that non-wearing of helmet is the reason for the death of the deceased Anandraj. Further, the learned counsel submitted that the accident took place in the year 2017; at the time of accident, the deceased Anandraj was

32 years old and he was working as a Tailor and earning a sum of Rs.16,000/- as monthly income, but, without considering all these aspects, the Tribunal had notionally fixed a meagre amount of Rs.9,000/- as monthly income of the deceased and awarded Rs.12,24,000/- towards Loss of Income. Therefore, the learned counsel prayed for allowing the appeal.

8. Though notice has been served on the respondents 1 & 2 and their names are printed in the cause list, none appeared on their behalf.

9. Mr.S.Vadivel, learned counsel appearing for the third respondent/Insurance Company *per contra* submitted that the Tribunal had rightly fixed 20% contributory negligence on the deceased Anandraj since at the time of accident, he was not having a valid driving license and he was not wearing the helmet; further, the Tribunal had rightly held that if the deceased Anandraj had worn the helmet at the time of accident, he would not have died due to head injuries; that the head injuries sustained by the deceased in the accident can be evident from the exhibits viz., Ex.P7 (Accident Register) & Ex.P8 (Post-Mortem Report of the deceased Anandraj); that though the appellants/claimants claimed that the deceased Anandraj was having a valid driving license at the time of accident, they did

not produce any proof before the Tribunal to establish their claim; that similarly, they did not produce any documentary evidence to prove the monthly income of the deceased; that even in the absence of income proof, the Tribunal had notionally fixed a sum of Rs.9,000/- as monthly income of the deceased and awarded Rs.12,24,000/- towards Loss of Income; that the amount awarded by the Tribunal towards Loss of Income is fair and reasonable and hence, submitted that the same need not to be enhanced. The learned counsel brought to the notice of this Court that in the claim petition, the appellants/claimants had stated that at the time of accident, the deceased Anandraj was 32 years old, but, in Ex.P8 (Post-Mortem Report of the deceased Anandraj) as well as Ex.P9 (Death Certificate of the deceased Anandraj), it is mentioned that the deceased was 30 years old; hence, the Tribunal came to the conclusion that at the time of accident, the deceased Anandraj was 30 years old and computed the Loss of Income, by applying multiplier '17' and hence, submitted that the above appeal may be dismissed.

10. Heard the learned counsel for the appellants/claimants and the learned counsel appearing for the third respondent/Insurance Company and perused the materials available on record.

11. The two issues to be decided in the present case are as follows:

(i) Whether the 20% contributory negligence fixed on the part of deceased Anandraj by the Tribunal is correct?

(ii) Whether the quantum of compensation awarded by the Tribunal for the death of the deceased Anandraj is just and reasonable?

12. As far as fixation of negligence is concerned, the Tribunal had fixed 80% contributory negligence on the first respondent and 20% contributory negligence on the deceased Anandraj. From a perusal of the materials available on record, it is seen that before the Tribunal, P.W.1 deposed that her husband Anandraj was having a valid driving license at the time of accident, but, she did not produce the driving license of her deceased husband Anandraj. It is also seen that the deceased Anandraj was not wearing the helmet at the time of accident which can be evident from the head injuries sustained by him in the accident. The exhibits viz., Ex.P7 (Accident Register) & Ex.P8 (Post-Mortem Report of the deceased Anandraj) confirm the head injuries sustained by the deceased in the accident. At this juncture, it is pertinent to state that this Court had held in similar cases that it would be just and appropriate to fix 20% contributory

negligence on the person who rode the two wheeler without having a valid driving license and also, without wearing the helmet. Therefore, this Court is of the view that there is no reason to interfere with the finding of the Tribunal with regard to the fixation of 20% contributory negligence on the deceased Anandraj and hence, the same is confirmed.

13. So far as quantum of compensation is concerned, though P.W.1 in her deposition, deposed that her deceased husband Anandraj was working as a Tailor and was earning a sum of Rs.16,000/- as monthly salary, but, the Tribunal had notionally fixed a meagre amount of Rs.9,000/- as monthly income of the deceased. Further, the Tribunal had failed to grant 40% of monthly income of the deceased towards future prospects as held by the Hon'ble Supreme Court in the case of ***Sarla Verma & Ors. Vs.Delhi Transport Corporation & Anr.*** reported in ***2009 (6) SCC 121*** as well as in the case of ***National Insurance Co. Ltd., Vs. Pranay Sethi & Ors.*** reported in ***2017 (2) TNMAC 609 (SC).***

14. Considering the year of accident, age and profession of the deceased Anandraj at the time of accident and also, the year of accident, this Court is of the view that it would be just and reasonable to fix Rs.12,000/-

as notional monthly income of the deceased Anandraj. Thus, by granting 40% enhancement towards future prospects, deducting 1/3rd towards personal expenses of the deceased and applying the multiplier '16', the compensation towards Loss of Income is enhanced as follows:

Rs.12,000 + Rs.4,800/- (40% of 12,000)	**=**	**Rs.16,800**
Rs.16,800 – Rs.5,600 (1/3rd of 16,800)	**=**	**Rs.11,200**
Rs.11,200 x 12 x 16	**=**	**Rs.21,50,400**

15. The compensation awarded by the Tribunal under all other heads is just and reasonable and hence, the same are confirmed. The break-up details of the enhanced compensation are as follows:

Sl.No.	***Description***	***Amount awarded by the Tribunal (Rs.)***	***Amount awarded by this Court (Rs.)***	***Award Confirmed or Enhanced or Granted***
1	Loss of Income	Rs.12,24,000/-	Rs.21,50,400/-	Enhanced
2	Loss of Love & Affection	Rs.1,20,000/-	Rs.1,20,000/-	Confirmed
3	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
4	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
Total		Rs.13,74,000/-	Rs.23,00,400/-	---
Less 20% for contributory negligence on the part of the deceased.		Rs.2,74,800/-	Rs.4,60,080/-	---
Net Compensation payable to the appellants/claimants		Rs.10,99,200/-	Rs.18,40,320/-	Enhanced by Rs.7,41,120/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.10,99,200/- awarded by the Tribunal is enhanced to Rs.18,40,320/- (Rupees Eighteen Lakhs Forty Thousand Three Hundred and Twenty only) together with interest at 7.5% per annum from the date of petition till the date of deposit. Out of the enhanced award amount, the 1st appellant is entitled to Rs.9,20,160/-; 2nd appellant is entitled to Rs.3,68,064/- and 3rd appellant is entitled to Rs.5,52,096/-. The third respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.18,40,320/-, after deducting the amount(s), if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit (excluding the default period, if any), to the credit of M.C.O.P.No.1363 of 2018, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants 1 & 3 are permitted to withdraw their respective share of the award amount along with proportionate interest and cost, as per the apportionment ordered by this Court. So far as the share of 2nd appellant (minor daughter of the deceased) is concerned, the third respondent/Insurance Company shall deposit the same in Fixed Deposit in any one of the Nationalized Banks, till she attains majority and the interest

accrued thereon shall be withdrawn by her guardian once in three months, directly from the Bank. The appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced award amount, before receiving the copy of this judgment. No costs.

01.08.2023

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

To

1.The Motor Accident Claim Tribunal/Sub Court,
Kangeyam, Tiruppur District.

2.The Section Officer,
Vernacular Records Section,
High Court, Madras.

SUNDER MOHAN, J.

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