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CMA No. 1432 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1432 of 2023

1. M.Verabhadra
2. V.Manjula

...Appellants/petitioners

Versus

- 1.Sirigirireddy Nagarjuna Reddy

- 2.The Manager,
IFFCO TOKIO General Insurance Co.Ltd.,
2nd Floor, Opp. Andhara Bank,
Near Ramanuja Circle, Tirupathi,
Andrapradesh – 517501, Its Branch Office at
GSN Archade 2nd Floor, Hosur,
Tamil Nadu – 635 109

...Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 08.11.2021 made in M.C.O.P.No.1256 of 2020 on the file of the Motor Accident Claims Tribunal Special District Court, Krishnagiri.

For Appellants : Mr.SP.Yuaraj
For Respondents : R1 - Exparte
R2 – Mr.J.Michael Visuvasam



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J U D G M E N T

The claimants have preferred the above appeal seeking enhancement of the compensation awarded by the Tribunal.

2. The appellants filed the claim petition stating that on 22.05.2020 at about 18:00 hours, while the deceased was travelling as a pillion rider in a two-wheeler bearing Reg.No.AP-03-AN-3143 in a public place, a lorry bearing Reg.No.AP-04-TW-4666 belonging to the first respondent and insured with the second respondent came in a rash and negligent manner dashed against the two wheeler of the deceased, as a result of which the deceased sustained fatal injuries.

3. The first respondent remained ex-parte before the Tribunal.

4. The second respondent/insurance company filed a counter denying the averments made in the claim petition and stated that the accident occurred due to the negligence of the rider of the two wheeler; that the driver of the first respondent's lorry was not holding valid driving licence at the time of the accident; that in any case, the claim was excessive and prayed for dismissal of the claim petition.



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5. The appellants examined P.W.1 and P.W.2 and marked nine documents as Exs.P1 to P9. The respondents neither examined any witness nor marked any document.

6. The Tribunal, after taking into consideration the oral and documentary evidence, fixed 10% of the contributory negligence on the rider of the two wheeler and awarded a total compensation of Rs.13,40,466/- to the appellants.

7. The learned counsel for the appellants/claimants submitted that the notional income fixed by the Tribunal at Rs.9,000/- is meagre and prayed for enhancement of compensation. The learned counsel for the appellants further submitted that the Tribunal ought not to have fixed 10% contributory negligence on the rider of the two-wheeler.

8. Since the first respondent remained ex-parte before the Tribunal, the learned counsel for the appellants made an endorsement to dispense with notice to the first respondent. Hence, notice to the first respondent is dispensed with.



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9. The learned counsel for the second respondent/insurance company per contra, submitted that the award of compensation is just and reasonable and prayed for dismissal of the appeal.

10. Heard the learned counsel for the appellants as well as the second respondent and perused the materials available on record.

11. The questions involved in the instant appeal are:

- (i) Whether the Tribunal was right in fixing 10% contributory negligence on the rider of the two wheeler?
- (ii) Whether the compensation awarded by the Tribunal is just and reasonable?

12. As regards first question, this Court finds that the rider of the two wheeler travelled with a child who was aged about eight years and a pillion rider who was aged about twenty two years. There is nothing in the evidence to suggest that the rider had contributed to the accident because of the child also travelling along with other pillion rider in the bike. In the absence of evidence to show that the deceased had



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contributed to the accident, the Tribunal erred in fixing 10% contributory negligence on deceased and hence the same is set aside.

13. As regards compensation, it is seen from the records that the accident took place in the year 2020, i.e., 22.05.2020. The appellants have examined P.W.1/father of the deceased to prove that the deceased was working as Tailor. However, no document was filed to prove the income of the deceased. Considering the age, avocation of the deceased, year of the accident and that the claimants are the parents of the deceased, this Court is of the view that it would be just and reasonable to fix Rs.15,000/- per month as notional income of the deceased. Since the deceased was aged 22 years at the time of the accident, the appellants are entitled to 40% enhancement towards future prospects. Since the deceased was unmarried at the time of the accident, half of her income has to be deducted towards her personal expenses. The multiplier applicable is '18'. Hence, the appellants are entitled to compensation under the head "Loss of Dependency" in the following manner:

Rs.15,000/- + Rs.6000/- (40 % of Rs.15,000/-) X 12 X 18 X ½ =

Rs.22,68,000/-



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	13,60,800/-	22,68,000/-	Enhanced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	Funeral Expenses	15,000/-	15,000/-	Confirmed
4.	Loss of Consortium	80,000/-	80,000/-	Confirmed
5.	As per Ex.P8, Medical Bills	10,107/-	10,107/-	Confirmed
6.	As per Ex.P9, Ambulance Bills	8,500/-	8,500/-	Confirmed
	Total	Rs.14,89,407/-	23,96,607/-	
		10% contributory negligence Rs.1,48,941/-	Set aside	



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	Compensation payable to the claimants	Rs.13,40,466/-	Rs.23,96,607/-	Enhanced by Rs.10,56,141/-

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,40,466/- is hereby enhanced to Rs.23,96,607/- 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 second respondent/Insurance Company is directed to deposit the enhanced 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 a copy of this Judgment . On such deposit, the appellants are permitted to withdraw their share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn, on the basis of apportionment fixed by the Tribunal. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

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Index: Yes/No

Neutral Citation: Yes / No



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To

1.The Special District Court,
Motor Accident Claims Tribunal,
Krishnagiri.

2.The Section Officer,
VR Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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