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CMA No. 2053 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2053 of 2022
and
C.M.P. No. 5937 of 2023

1. K.N.Aswini

2. Minor S.Anushka

(Rep. by next friend & Guardian mother
K.N.Aswini)

... Appellants

Versus

1. C.Shanmugasundaram

2. United India Insurance Company Ltd.,
1170, Muthaiya Complex,
Mettur Road,
Erode – 11.

3. R.Annakkodi

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No. 549 of 2017 dated 02.12.2021 on the file of the Special District Court (Motor Accidents Claims Tribunal), Erode.

For Appellants : Mr. V.S.Kesavan

For Respondents : R1 – exparte

Mr. S.Arunkumar for R2

No appearance for R3



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being the driver cum owner of the mini auto has violated the policy condition and hence, the second respondent is not liable to pay compensation, and that in any case, the compensation claimed by the appellants is excessive and prayed for dismissal of the petition.

5.The third respondent filed a counter stating that she is the mother of the deceased and she is a dependant of the deceased and sought for compensation.

6.The appellants examined PW.1 and PW.2 and marked Ex.P.1 to Ex.P.11. The second and third respondents examined RW.1 and RW.2 and marked Ex.R.1 to Ex.R.6. Further, Ex.W.1 and Ex.W.2 were marked.

7.The Tribunal after considering the oral and documentary evidence found that the accident occurred predominantly due to the rash and negligent driving of the first respondent. However found that the deceased also contributed to the accident and fixed 15% contributory negligence on the deceased and 85% contributory negligence on the first respondent. The Tribunal awarded a compensation of Rs. 16,93,146/- to the appellants and the third respondent to be paid by the second



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respondent at the first instance and then to recover it from the first respondent. Aggrieved by the said award, the appellants have preferred the instant appeal.

8.The learned counsel for the appellants submitted that the Tribunal had fixed 15% contributory negligence on the deceased since the deceased did not have valid driving license and other records of the vehicle at the time of the accident without any basis. The second respondent/insurance company had not stated that the deceased did not possess license in their counter. The learned counsel further submitted that though the appellants had established the fact that the deceased was working as a construction contractor and was also doing sand business, the Tribunal had taken a meagre sum of Rs. 10,000/- as notional income and hence, prayed for enhancement of compensation.

9.Since the first respondent had remained exparte before the Tribunal, the learned counsel for the appellants sought permission of this Court to dispense with the notice to him and has made an endorsement to that effect. Hence, notice to the first respondent is dispensed with.



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WEB COPY 10. The learned counsel for the second respondent, per contra, submitted that the award of the Tribunal is just and reasonable and no interference is called for. Hence, he prayed for dismissal of the appeal.

11. Though notice has been served on the third respondent, none has entered appearance on her behalf.

12. The questions that arise for consideration in the instant appeal are;

- (i) Whether the Tribunal was right in fixing 15% contributory negligence on the deceased?
- (ii) Whether the compensation awarded by the Tribunal is just and reasonable?

13. This Court finds that the Tribunal had fixed 15% contributory negligence on the deceased for not possessing driving license and other records of the vehicle at the time of the accident. The appellants had examined PW.2 eye-witness to the occurrence to prove the manner of the accident. The second respondent had not let in any evidence to disprove



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the same. Further, the second respondent had not pleaded in their counter about the absence of driving license. The evidence does not suggest that that the deceased had contributed to the accident in any manner. Further the second respondent had not established that the deceased did not have license. In these circumstances, this Court is of the view that the Tribunal ought not to have held that the deceased did not have valid driving license and fixed 15% contributory negligence on the deceased. Therefore, the finding of the Tribunal in fixing 15% contributory negligence on the deceased is liable to be set aside.

14.As regards the quantum of compensation, it is seen that in the absence of any evidence to prove the avocation and income of the deceased, the Tribunal had fixed Rs. 10,000/- as notional income per month. Considering the facts and circumstances of the case, this Court is of the view that the notional income fixed by the Tribunal is just and reasonable and no interference is called for. The award under the head pain and sufferings is not justified and the same is set aside. The award of the compensation under the other heads are just and the same are confirmed. Thus, the award of the Tribunal is modified as follows;



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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 income	17,91,936	17,91,936	Confirmed
2.	Funeral expenses	15,000	15,000	Confirmed
3.	Loss of estate	15,000	15,000	Confirmed
4.	Loss of parental consortium	40,000	40,000	Confirmed
5.	Loss of consortium	40,000	40,000	Confirmed
6.	Loss of filial consortium	40,000	40,000	Confirmed
7.	Pain and sufferings	50,000	---	Deleted
	Total	19,91,936	19,41,936	
	After deducting contributory negligence	16,93,146 (15%)	19,41,936 (0%) rounded off to Rs. 19,42,000	Enhanced by Rs.2,48,854/-

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,93,146/- is hereby enhanced to Rs.19,42,000/- 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 is directed to deposit the 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 copy of this



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Judgment at the first instance and recover it from the first respondent. On such deposit, the first appellant and the third respondent are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn as per the apportionment fixed by the Tribunal. The share of the minor second appellant is directed to be deposited in interest bearing Fixed Deposit in any of the Nationalized Banks till she attains majority and the first appellant is permitted to withdraw the accrued interest once in six months. The appellants are directed to pay the necessary court fee if any on the enhanced award amount. Consequently, the connected miscellaneous petition is closed. No costs.

08.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Special District Court (Motor Accidents Claims Tribunal),
Erode.



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



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SUNDER MOHAN, J

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