IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2386 of 2021

1.Sivagami
2.Palanivel ...Appellants

Versus

1.Karunagaran
2.United India Insurance Company Ltd.
No.14, C.S.K.Complex,
Town Panchayat Office Road,
Uthangarai – 635 207
Krishnagiri. ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the award passed in Judgment and Decree dated 07.01.20231 made in MCOP NO.459 of 2019 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Salem.

For Appellants	:	Mr.SP.Yuaraj
For Respondents	:	
[R1]	:	Address cannot be located.
[R2]	:	M/s.I.Malar.

JUDGMENT

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988 by the claimants challenging the Award in MCOP No.459 of 2019 dated 07.01.2023, on the file of the Motor Accidents Claims Tribunal, Special District Judge, Salem, for enhancement of compensation and against the contributory negligence fixed on the deceased/Sanjai Roshan in this case.

2. The case of the claimants is that the deceased namely Sanjai Roshan was a diploma holder in Mechanical Engineering and was riding his two wheeler bearing registration No.TN 93 A 2245, on 18.11.2018 at about 4.50 pm on the Mettur to Bhavani main road, while he reached near Navapatti bus stop, a Mahindra Van bearing registration No.TN 24 J 0795 came in the opposite direction in high speed, in negligent manner dashed against the deceased, which resulted in serious injuries, subsequently he succumbed.

3. The claimants are the parents of the deceased/Sanjai Roshan filed claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.25,00,000/-. The 1st Respondent/Karunagaran who is the owner of the Mahindra Van remained *ex-parte* and the 2nd Respondent/United India Insurance Company Ltd/Insurer, contested the claim before the Tribunal on the ground that the deceased was riding two wheeler without wearing any helmet and without any proper Driving License. While he was overtaking a car in negligent manner, the Mahindra Van hit the deceased. The deceased has also contributed to the negligence. The quantum of compensation claim was also disputed by the 2nd Respondent.

4. After considering the evidence placed on record, the Motor Accidents Claims Tribunal in point Nos.1 and 2 has held that the driver of the Mahindra Van has negligently driven the Van and dashed against the deceased. Since the deceased was not wearing helmet, he also contributed to the negligence to an extent of 15 per cent. In point No.4, the Tribunal quantified the compensation and awarded a sum of Rs.13,15,200/- with an interest @ 7.5 per cent per annum. Against the fixation of contributory negligence of the deceased and also for enhancement of compensation more particularly the notional income fixed by the Tribunal, this appeal is filed by the claimants.

5. Learned counsel for the Appellants/Claimants submits that the Tribunal has proceeded on assumption that the deceased has sustained head injuries and held that since he was not wearing the helmet, he had succumbed to injuries. There is no evidence placed on record to show that the deceased sustained any head injury. Similarly, the notional income of the deceased fixed is also on the lower side and it has to be modified and relied on the judgment of the Division Bench Judgment of this Court in **Shriram General Insurance Co.Ltd., Vs. Mr.Gopalappa @ Gopal and Anr.** in C.M.A.No.4088 of 2019 dated 17.07.2023 and prayed to fix the notional income of deceased as Rs.19,000/- per month.

6. *Per-Contra*, learned Counsel for the 2nd Respondent submitted that the post-mortem report has been properly appreciated by the Tribunal and only thereafter the contributory negligence on the the part of the deceased has been fixed. Similarly the compensation fixed is also just compensation awarded and the same is to be confirmed.

7. I have considered the submission of both sides, and perused all the available materials on record.

8. This Tribunal while considering the negligent act on the part of the driver of the Mahindra Van has accepted the case of the claimants based on evidence and more particularly the rough sketch Ex.P5 and Ex.P1 FIR. It is held that the accident took place on the right hand side of the road which itself speaks that the Mahindra Van crossed the middle of the road, reached the other side and hit the two wheeler which was ridden by the deceased. There is no challenge regarding this finding by the Insurance Co. The Tribunal further held that the evidence placed on record shows that deceased was not wearing any head gear, hence he shall be liable for contributory negligence. Ex.P2 the post-mortem certificate shows that no injuries on the head of the deceased were noted. Post-mortem Doctor recorded various injuries sustained by the deceased from chest till the abdomen and no head injuries particularly on the skull is found. The opinion for cause of death stated that the deceased appeared to have died due to shock and haemorrhage and due to multiple fractures and injury to vital organs.

9. Since the evidence placed on record shows that the Mahindra Van has entered into the opposite direction and hit on the 2 wheeler and the injuries sustained are also between the neck and the abdomen, the contributory negligence fixed on the claimant for non-wearing the helmet is not proper and is liable to set aside.

10. With regard to the quantum of compensation, Tribunal fixed the notional income of the deceased as a sum of Rs.10,000/- per month. The Division Bench judgment of this Court in ***Shriram General Insurance Vs. Mr.Gopalappa and Ors.*** in C.M.A.No.4088 of 2019 dated 17.07.2023 has held that for the IT student who was a student in NTTF, College, Banglore, was entitled to the notional income for a sum of Rs.19,000/- per month. The Division Bench held that apart from studying, the deceased therein was also engaged in buying and selling of computers and mobiles and was earning a sum of Rs.15,000/- per month, and on that basis fixed the notional income of the deceased. But in this case there is no evidence that the deceased was engaged in any other additional work and earned income. Considering the date of the accident and the age of the deceased, applicable multiplier for the age of the deceased is 18. The proper notional income is hereby fixed in this case is a sum of Rs.15,000/-. Out of which 50% deduction of personal and living expenses. The claimants are also entitled for future prospects of

40% of the monthly income. Accordingly the multiplicand is summed as follows:

Annual Income	Rs.15,000/- X 12 = Rs.1,80,000/-
40% Future Prospects	Rs.72,000/-
Total	Rs.2,52,000/-
50% Deduction of Personal Expenses	Rs.1,26,000/-

11. Thus, the applicable multiplier is 18, thus the loss of income is Rs.1,26,000/- X 18 = Rs.22,68,000/-. The claimants are entitled for compensation under conventional head of the head loss of consortium for a sum of Rs.40,000/- each i.e., total Rs.80,000/- as per the judgment of the Apex Court in ***Shriram General Insurance Vs. Mr.Gopalappa and Ors.*** in C.M.A.No.4088 of 2019 dated 17.07.2023 and Rs.30,000/- total under the enhancement heads loss of estate and funeral expenses.

12. In the result, this civil miscellaneous appeal is modified and allowed and the compensation awarded by the Tribunal at Rs.13,15,200/- is hereby enhanced to **Rs.23,78,000/- [Rupees Twenty Three Lakh Seventy Eight Thousand Only]** together along with interest at the rate of 7.5 % per annum from the date of claim petition till the date of deposit. The Respondent-Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of copy of this judgment to the credit of MCOP No.459 of 2019 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Salem. On such deposit, the appellant(s)/claimant(s) is/are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary court fee, if any, on the enhanced compensation. The claimants are not entitled to any interest for default period if any. There shall be no order as to costs in the present appeal.

28.11.2023

Index : Yes/No
Speaking : Yes/No
NCC : Yes/No
nst

To:

1.The Motor Accidents Claims Tribunal,
Special District Judge,
Salem.

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

K.RAJASEKAR ,J.

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