IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

CMA.No.1079 of 2022

1.N.Vennila
2.C.Nagesh

...Appellants

Vs

1.S.Chandrasekar

2.Reliance General Insurance Co. Ltd.,
No.6, Haddows Road,
Reliance House, 6th floor,
Nungambakkam, Chennai-600 008.

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying to enhance the Award and Decree made in M.C.O.P.No. 3162 of 2019, dated 02.11.2021 on the file of the Chief Court of Motor Accident Claims Tribunal, Small Causes Court, Chennai.

For Appellants	: Mr.A.A. Venkatesan
For R-1	: No appearance
For R-2	: Mrs.C. Bhuvanasundari

JUDGMENT

This appeal is filed against the Award and Decree made in M.C.O.P.No. 3162 of 2019, dated 02.11.2021 on the file of the Chief Court of Motor Accident Claims Tribunal, Small Causes Court, Chennai.

2. The claimants have filed the above appeal for enhancement of compensation. On 05.02.2019, when the deceased was travelling as a pillion rider in a motorcycle, the rider of the motorcycle drove the same in a rash and negligent manner, lost his control, and fell into a ditch on the road side as a result, the claimant's son sustained fatal injuries and died on the way to hospital.

3. According to the claimants, the deceased was aged 19 years at the time of accident and as a Electrician (ITI discontinued), he was earning Rs.900/- per day. The claimants therefore filed the claim petition claiming a sum of Rs.50,00,000/- as compensation against the owner and the insurer of the motor cycle.

4. The first respondent, owner of the motor cycle remained ex-parte and the claim petition was contested by the second respondent/Insurance company. The second respondent/Insurance company filed a detailed counter affidavit denying all the claim averments apart from disputing negligence, quantum and liability.

5. Before the Claims Tribunal the first claimant examined herself as P.W.1 and eye witness as P.W.2 and Ex.P.1 to Ex.P.13 were marked in support of the claim. On the side of the respondent one witness was examined and one document was marked.

6. The Claims Tribunal on an assessment of entire evidence on record found, that the deceased had contributed to the accident by triple riding and therefore deducted 20% towards the contributory negligence of the deceased. The Tribunal assessed the notional income at Rs.10,000/- per month and awarded a total compensation of Rs.16,22,000/-. After deducting 20% from the total compensation

towards the contributory negligence of the deceased the compensation was fixed at Rs.12,97,600/- along with 7.5% interest. Not satisfied with the award passed by the Claims Tribunal, the claimants have preferred the above appeal seeking enhancement of compensation.

7. The learned counsel for the appellants submits that the Tribunal erred in deducting 20% towards contributory negligence of the deceased. The learned counsel further submitted that, as the deceased was only 19 years of age at the time of accident and was an Electrician, the notional income ought to have been fixed at Rs.15,000/- per month instead of Rs.10,000/- per month. On the said submission, the learned counsel pleaded that the compensation may be enhanced.

8. The learned counsel for the second respondent/Insurance company on the other hand, submitted that the finding of Claims Tribunal towards contributory negligence was based on evidence

and therefore the award passed by the Tribunal was reasonable and fair. The learned counsel further submitted that the notional income fixed by the Claims Tribunal was also fair, considering that there was no evidence to prove the deceased's income as an electrician. The learned counsel therefore submitted that the appeal deserved to be dismissed.

9. I have heard both the learned counsels and have perused the materials placed on record.

10. It is seen that the deceased was triple riding in the motor cycle at the time of the accident. The rider of the motor cycle drove the vehicle in a rash and negligent manner, lost his control and fell into the ditch. Because of the rash and negligent driving of the two-wheeler rider, the deceased who fell into the ditch suffered grievous injuries and succumbed to the same on the way to the hospital.

11. It is seen that there is no vehicle involved in the accident

and even in the claim petition, it was clearly stated that the rider of the two-wheeler by his rash and negligent driving lost control of the vehicle and caused the accident. It is therefore clear from averments in the claim petition that, because the deceased was triple riding in the two-wheeler, the rider could not control his vehicle lost control and fell into the ditch. I am therefore of the view that the finding of the Claims Tribunal on the contributory negligence is justified and the same is not interfered with.

12. The Claims Tribunal relied on the Judgment of this Court in the case of *Oriental Insurance Co. Ltd., Vs. Johnson and others* reported in *2017 (1) TN MAC 484,* for its finding on contributory negligence. I am of the view that the said Judgment squarely applies to the facts of the present case and therefore the Tribunal was justified in fixing the Contributory negligence at 20% on the part of the deceased.

13. On the issue of quantum, the Claims Tribunal in the absence of any evidence that the deceased was doing the job of an

Electrician and earning Rs.27,000/- per month, fixed the notional income at Rs.10,000/-, added 40% towards future prospects, deducted 50% towards personal expenses and arrived at Rs.15,12,000/- towards loss of dependency.

14. It is stated in the claim petition that the deceased discontinued the ITI course and was working as an electrician. The second respondent in the counter affidavit did not deny the avocation of the deceased as an Electrician. In the light of the document Ex.P.7, which is the student Identity Card and bill issued by the Kumaran ITI, the claim of the claimants that the deceased was working as an Electrician can be accepted. There is no proof of income but considering that the accident took place in the year 2019 and the social economic conditions at that time, I am of the view that income of the deceased can be safely fixed at Rs.12,000/- per month. 40% is added towards future prospects and 50% is deducted towards deceased's personal expense as he died as a bachelor. The amount towards loss of dependency is thus arrived at Rs.18,14,400/-

(12,000+4,800=16800x1/2=8,400/- and 8,400 x 12 x 18= 18,14,400/-). It is fairly submitted by the learned counsel for the appellants that the award towards other heads is in conformity with the Judgment of Hon'ble Supreme Court in the case of *National Insurance Co. Ltd. Vs Pranay sethi* reported in *2017(2) TN MAC 609 (SC)*. Therefore, the award towards other heads are confirmed.

15. In the light of the above discussion, the award of the Claims Tribunal is modified as follows:

S.No	***Various Heads***	***Award by Tribunal (amount in Rs.)***	***Award by this Court (amount in Rs.)***
1.	Loss of Income/dependency	15,12,000/-	18,14,400/-
2.	Loss of estate	15,000/-	15,000/-
3.	Loss of consortium Rs.40,000/- (each) x 2	80,000/-	80,000/-
4.	Funeral Expenses	15,000/-	15,000/-
Total Compensation		16,22,000/-	19,24,400/-
Less 20% for contributory negligence		3,24,400/-	3,84,880/-
Compensation Payable		12,97,600/-	15,39,520/-

16. It is submitted by the learned counsel for the second

respondent that the entire award amount along with interest and cost has been deposited before the Claims Tribunal. In view of the submission of the learned counsel for the second respondent, a direction is issued to the second respondent/Insurance company to deposit the balance enhanced amount of Rs.2,41,920/- rounded off to Rs.2,42,000/- along with 7.5% interest within a period of four (4) weeks from the date of receipt of copy of this Judgment. On such deposit being made the claimants shall be entitled to withdraw the same. The apportionment of compensation shall be as fixed by the Claims Tribunal.

17. It is seen that the Claims Tribunal has directed the second respondent Insurance company to pay the compensation amount and recover it from the owner i.e first respondent due to violation of policy conditions, therefore the direction of the Tribunal to pay and recover is confirmed.

In the result, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

22.06.2023

dsn
Index: Yes/No
Speaking Order: Yes/No
Neutral citation: Yes/No

To
The Chief Judge,
Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

Copy to
The Section Officer,
V.R.Section,
High Court, Madras.

N.MALA.J.,

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C.M.A.No.1079 of 2022

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