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C.M.A.No.2168 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No. 2168 of 2018

1.S.Nagavalli
2.S.Sathish Kumar
S.Deepa (Minor 14 years) (Died)
3.K.Sulochana ... Appellants

Vs.

1.B.Kesavalu
2.Shriram General Insurance Co.Ltd., ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the award passed in M.C.O.P.No.4686 of 2012 dated 29.08.2017 on the file of the II Judge, Small Causes Court, Chennai/Motor Accident Claims Tribunal, Chennai.

For Appellant : Mr.K.R.Ponnusamy
for M/s.Anand and Suryas

For Respondents : Mr.S.Dakshnamoorthy
for R2
R1-*Ex-parte*



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J U D G M E N T

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Challenging the Award dated 29.08.2017 passed in M.C.O.P.No.4686 of 2012 on the file of the II Judge, Small Causes Court, Chennai/Motor Accident Claims Tribunal, Chennai, the claimants have filed the present appeal.

2. For the purpose of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

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

(i) On 26.12.2011 at about 23.30 hours, the deceased was driving a lorry bearing Registration No.TN-04-AJ-1747 from Chennai to Bellary, Karnataka State. When the deceased was proceeding near Puttur Renigunda N.H. at Vadamalpet Mandal, a lorry bearing Registration No.KA-07-6225, which is owned by the first respondent and insured with the second respondent came from the same direction, driven by its driver in a rash and negligent manner and without taking any precautionary measures swerved the lorry to its right side just to avoid to hit the Dirisena trees and in



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the said process, the first respondent's sugar cane lorry touched the said trees and the driver of the first respondent's lorry applied sudden brake and due to falling of the sugar canes from the first respondent's lorry, the lorry driven by the deceased touched the lorry of the first respondent. Due to the said impact, the deceased sustained fatal injuries all over the body and died on the spot. Hence, the legal heirs of the deceased have filed the claim petition, claiming a sum of Rs.20,00,000/- as compensation.

4. The first respondent, who is the owner of the offending vehicle, remained *ex-parte* before the Tribunal.

5. The said claim was resisted by the Insurance Company by filing a counter statement denying the age, occupation and monthly income of the deceased. They also denied the place, date, time and manner of the accident as stated by the claimants in the claim petition. Thus, they sought for dismissal of the claim petition.

6. To substantiate the case on the side of the claimants, P.W.1 and P.W.2 were examined and documents Ex.P1 to Ex.P10 were marked. On the side of the second respondent/Insurance Company, neither oral



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evidence nor documentary evidence was adduced before the Tribunal.

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7. The Tribunal, after considering the oral and documentary evidence available on record, awarded a total compensation of Rs.12,83,400/- and fixed 25% of contributory negligence on the part of the deceased and awarded a sum of Rs.9,62,550/- [12,83,400 – 320850] and the same was rounded off to Rs.9,63,000/-, along with interest at 9% per annum from the date of claim petition till the date of payment by the second respondent on behalf of the first respondent. The break-up details of the amounts awarded by the Tribunal under various heads are as follows :

S.No.	<i>Compensation awarded by the Tribunal under the heads</i>	<i>Amount in Rs.</i>
1.	Compensation after multiplier of 14 is	10,58,400
2.	Loss of Love and Affection towards 2 and 4 petitioners	1,00,000
3.	Consortium	1,00,000
4.	Funeral Expenses	25,000
	Total	12,83,400
	Less Contributory negligence (25%)	9,63,000
	Compensation payable	9,63,000



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8. Challenging the above award of compensation and the contributory negligence fixed on the part of the deceased, the claimants have filed the present Civil Miscellaneous Appeal.

9. The learned counsel for the appellants/claimants submitted that on the date of accident, while the deceased drove the lorry bearing Registration No.TN-04-AJ-1747 from Chennai to Bellary, Karnataka State, a lorry bearing Registration No.KA-07-6225 loaded with sugar canes, driven by its driver in a rash and negligent manner, dashed the trees and the lorry got capsized and due to falling of sugar canes from the lorry of the first respondent on the lorry of the deceased, the accident had occurred and the deceased succumbed to grievous injuries. The claimants, who are the dependents of the deceased, have filed the claim petition claiming compensation for the death of the deceased. He further submitted that the deceased drove the heavy motor lorry in more than 60 kms without any difficulty, however, due to the rash and negligent driving of the driver of the offending vehicle, the accident had occurred. Hence, there is no negligence



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on the part of the deceased, but the Tribunal failed to appreciate the entire facts erroneously and fixed 25% contributory negligence on the part of the deceased, which warrants interference by this Court.

10. The learned counsel for the appellants/claimants further submitted that as far the quantum of compensation is concerned, at the time of the accident, the deceased was aged about 42 years and working as a driver and earning a sum of Rs.10,000/-. The Tribunal, without considering the nature of avocation and minimum wages, fixed the monthly income of the deceased as Rs.6,000/-, which is very low and it does not reflect "just and fair" compensation. He further submitted that, at the time of accident and filing of the claim petition, the dependents of the deceased are four persons and the Tribunal ought to have deducted 1/4 towards personal expenses, but, the Tribunal erroneously deducted 30% towards personal expenses, which warrants interference by this Court. He further submitted that at the time of the accident, the deceased was only 42 years and the future prospects fixed by the Tribunal are very low. Hence, he seeks enhancement of compensation.

11. The learned counsel for the second respondent/Insurance



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Company submitted that the deceased did not possess valid driving licence at the time of the accident, which amounts to violation of policy conditions.

No person can ply the heavy duty motor vehicle on the road without having any valid driving licence. Since the deceased violated the policy conditions, the Tribunal rightly fixed contributory negligence on the part of the deceased and there is no reason to interfere with the Award passed by the Tribunal. He further submitted that the Tribunal genuinely fixed a sum of Rs.1 lakh towards love and affection and also awarded the amount in the other heads, which are exorbitant. Further, the appellants/claimants have not produced any documents to prove the employment or income of the deceased. Therefore, the Tribunal fixed notional income at Rs.6,000/- and by taking 50% of monthly income of the deceased, a sum of Rs.3,000/- was fixed towards future prospects. At the time of filing the claim petition, the dependents of the deceased are four, however, during the pendency of the claim petition, the third claimant died, and hence, the Tribunal deducted 30% towards personal expenses. There is no merit in the appeal and the same is liable to be dismissed.



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12. Heard the learned counsel for the appellants and the learned counsel for the second respondent and also perused the materials available on record.

13. Admittedly, at the time of accident, the deceased was driving heavy duty lorry without having any valid driving licence. The original driving licence of the deceased got expired three months prior to the accident and he did not renew the licence. Therefore, the Tribunal rightly fixed 25% contributory negligence on the part of the deceased.

14. This Court, as an appellate Court, and also being a fact-finding Court, had analysed the issue independently and re-appreciates the evidence to render an independent finding.

15. On a perusal of the entire oral and documentary evidence, it is seen that the deceased did not possess valid driving licence at the time of the accident and drove the heavy duty lorry, which amounts to violation of policy conditions. Hence, this Court is not inclined to interfere with the negligence fixed by the Tribunal on the part of the deceased.



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16. So far as the quantum of compensation is concerned, it is the submission of the learned counsel for the appellants that the deceased was aged about 42 years and earning a sum of Rs.10,000/- per month as a driver. However, no proof was produced to prove the employment and income of the deceased. Therefore, the Tribunal has fixed the notional income of the deceased at Rs.6,000/-. Since the accident had occurred in the year 2011, the deceased being 42 years at the time of accident, if he goes for an employment, he would earn minimum Rs.7,500/- per month. Hence, the sum of Rs.6,000/- fixed by the Tribunal as monthly income of the deceased is hereby set aside, instead a sum of Rs.7,500/- is taken as monthly income of the deceased. Thus, if a sum of Rs.7,500/- is taken as monthly income, the annual loss of income comes to Rs.90,000/-.

17. As far as the dependency is concerned, though in the claim petition four persons are included as dependents and during the pendency of the claim petition, one of the claimant, i.e third claimant died. Hence, the Tribunal deducted 30% towards personal expenses, but only 1/3rd of the



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amount should be deducted towards for personal expenses and hence, the

same is hereby set aside instead of 1/3 is taken as personal expense.

18. So far as future prospects is concerned, the Tribunal, by taking 50% of the monthly income, fixed Rs.3,000/- towards future prospects. At the time of the accident, the age of the deceased was 42 years and he is working in an un-organised concerned and he has no fixed income and hence, the sum of Rs.3,000/- fixed by the Tribunal as future prospects is hereby set aside, instead 25% is added towards future prospects. Thus, the amount works out to Rs.1,12,500/- [90,000 + 22,500]. Then, if 1/3 is deducted towards personal expenses, the amount works out to Rs.75,000/- [1,12,500 – 37,500]. Considering the age of the deceased being 42 at the time of the accident, if multiplier "14" is adopted, the amount comes to Rs.10,50,000/-. Therefore, the sum of Rs.10,58,400/- awarded by the Tribunal under the head "Loss of Dependency" is hereby reduced to Rs.10,50,000/-.

19. The amounts awarded by the Tribunal under the other



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heads are just, fair and reasonable, and hence, they are confirmed.

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20. The total compensation is re-determined as mentioned below:

<i>Sl. No</i>	<i>Head under which the compensation is awarded</i>	<i>Amounts awarded by the Tribunal in Rs.</i>	<i>Amounts awarded by this Court in Rs.</i>
1	Loss of Dependency	10,58,400	10,50,000
2	Loss of Love and Affection	1,00,000	1,00,000
3	Filial Consortium	1,00,000	1,00,000
3	Funeral Expenses	25,000	25,000
	Total	12,83,400	12,75,000
	Less Contributory negligence (25%)	9,63,000	9,56,250
	Compensation payable	9,63,000	9,56,250

21. Thus, the total compensation of Rs.9,63,000/- awarded by the Tribunal is hereby reduced to Rs.9,56,250/-[**Less Contributory negligence (25%) 12,75,000 – 3,18,750**] which shall carry interest at 7.5% from the date of claim petition till the date of payment. The Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw



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their respective shares. The apportionment of shares as fixed by the Tribunal to the claimants is hereby confirmed.

22. With the above observations and directions, the Civil Miscellaneous Petition is partly allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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1.The II Judge,
Small Causes Court,
(Motor Accident Claims Tribunal)
Chennai.

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



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P.VELMURUGAN, J.

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