IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.Nos.948 and 1337 of 2023
and C.M.P.No.2698 of 2023

C.M.A.Nos.948 of 2023

1. Sulochana @ Sulosana
2. Nagaraj ...Appellant

Vs.

1. Mohankumar
2. The Manager,
Reliance General Insurance Company Limited,
Sakthi Super Market, 3rd Floor,
No.408, Perundurai Road,
Erode – 638 011. ...Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow the present appeal and award enhanced compensation in judgment and decree dated 30.01.2023 in M.C.O.P.No.27 of 2019 on the file of the Sub Judge, Motor Accidents Claims Tribunal, Rasipuram.

C.M.A.No.1337 of 2023

Manager,
Reliance General Ins.Co.Ltd.,
Sakthi Super Market, 3rd Floor,
408, Perundurai Road,
Erode – 638 011. ...Appellant

Vs.

1.Sulochana @ Sulosana
2. Nagaraj
3. Mohankumar ... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Decree and Judgment dated 30.01.2023 passed in M.C.O.P.No.27 of 2019 on the file of the Sub Judge, Motor Accidents Claims Tribunal, Rasipuram.

For Appellant : Mr.R.Nalliyappan
[appellant and R1 in C.M.A.No.948 of 2023
and respondents in C.M.A.No.1337 of 2023]

For Respondents : Ms.C.Bhuvanasundari
[R2 in C.M.A.No.948 of 2023
and appellant in C.M.A.No.1337 of 2023]

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the claimant as well as the Insurance Company challenging the award dated

30.01.2023 in M.C.O.P.No.27 of 2019 on the file of the Sub Judge, Motor Accident Claims Tribunal, Rasipuram.

2. For the sake of convenience, the parties are referred to the rank mentioned in the first appeal (C.M.A.No.948 of 2023)

3. The claimants/appellants had filed a claim petition stating that the deceased one Arulmani was traveling as a pillion rider on 21.12.2018 at 07.00 p.m in Yamaha Facino bearing Registration No.TN-28-BX-8147 and the rider of the two wheeler was one Soundararajan; that while they were nearing a petti shop at East Valasu, Salem to Namakkal NH44 main road, the rider of the vehicle in a rash and negligent manner dashed against the bridge and caused the accident; as a result of which, the deceased, who was 18 years old and was working as a Mason died.

4. The first respondent/rider of the vehicle, brother of the deceased, who was the owner of the vehicle remained *ex-parte* before the Tribunal.

5. The second respondent/Insurance company submitted that the rider of the two wheeler was under the influence of the alcohol and hence, the insurance company was not liable to compensate the legal heirs of the deceased. Further, the first respondent/rider of the vehicle had also committed breach of policy condition by allowing a person without license to ride the vehicle.

6. The claimants examined two witnesses on their side and marked Ex.P1 to Ex.P10. The second respondent/insurance company examined two witnesses on their side Exs.R1 and R2. On the side of the witnesses, Ex.X1 to Ex.X8 were marked.

7. The Tribunal after considering the oral and the documentary evidence found that the second respondent/insurance company was liable to pay compensation to the claimants and awarded a sum of Rs.21,37,000/- as compensation. Aggrieved by the quantum of compensation awarded by the Tribunal, the claimants have filed C.M.A.No.948 of 2023. Aggrieved by the finding of the Tribunal on the

negligence as well as the quantum of compensation, the second respondent/insurance company has filed C.M.A.No.1337 of 2023.

8(a). Ms.C.Bhuvanasundari, learned counsel for the second respondent/insurance company submitted that the rider of the two wheeler was under the influence of alcohol and further, he had no valid license. That apart, the deceased was not wearing helmet at the time of the accident. In such circumstances, the finding of the Tribunal that the insurance company was liable to compensate the claimants is erroneous and is liable to be set aside.

8(b). The learned counsel further submitted that the deceased was a bachelor and the Tribunal had erroneously deducted 1/3rd of the income towards personal expenses instead of half. In any case, she submitted that the compensation awarded was excessive and was not justified.

9(a). *Per contra,* learned counsel for the claimants/appellants in C.M.A.No.948 of 2023 submitted that there is no evidence to show that the rider of the two wheeler had consumed alcohol. The evidence adduced on the side of the insurance company did not conclusively establish the fact that the rider was under the influence of the alcohol. Hence, the finding of the Tribunal that the insurance company was liable to pay compensation need not be interfered with.

9(b). As regards compensation, the learned counsel submitted that the accident was in the year 2018. At the time of accident, the deceased was 18 years old and was working as a Mason, even taking a conservative view, the notional income fixed at Rs.10,000/- is meagre and hence, prayed for enhancement.

10. This Court on perusal of the pleadings and the evidence of records filed by the claimants/appellants in C.M.A.No.948 of 2023, finds that the second respondent/Insurance company had not established that the rider of the two wheeler was under the influence of alcohol. In the absence of evidence to establish that the rider was under the influence of alcohol, it cannot be stated that the insurance company is not liable to

pay compensation. The only evidence is the noting in the accident register that the rider smelt of alcohol. That is hardly difficult to establish that he was under the influence of alcohol.

11. This Court, in the case of ***Muniyasamy and Anr.Vs. Managing Director*** reported in ***[2013 (1) T.N.M.A.C. 854]*** had held as follows:

> **“***14. Alcohol/arrack will emit smell. A drunkard loosing control of his mind and body, depends on various factors. By mere taking of alcohol and smell of alcohol, we cannot come to a conclusion that the person had lost control of his mind and body and he would have dashed against the moving bus.”*

12. Similarly, in the case of ***The Reliance General Insurance Company Limited Vs. Muniammal and Ors.*** reported in ***[2022 (1) T.N.M.A.C. 177]*** following the judgment in ***Muniyasamy's*** case (cited supra), this Court held as follows:

> *“8......Eventhough, alcohol found in the body of the deceased no adverse inference taken as per Judgment*

*reported in **2013 (1) TNMAC 854, in the case of Muniyasamy and another V. Managing Director, Tamil Nadu State Transport Corporation Ltd;** Madura. Mere presence of alcohol in the body of the two wheeler rider cannot prove the negligence of the driver."*

13. Further, in a recent judgment in the case of ***Managing Director, Tamil Nadu, State Transport Corporation Vs. S.Sangilikalai*** reported in ***[2023 (1) TNMAC 397],*** this Court had held that the breath of smell of alcohol is different from being under the influence of alcohol. The relevant portion is extracted hereunder:

"10.........*Though the Medical Officer, who examined the injured Chandrasekar at Watrap Government Hospital has noted that there was a breath of smell of alcohol, he has not recorded that the injured was under the influence of alcohol. There is also no evidence to show that the Blood samples were taken from the injured so as to ascertain whether the injured Chandrasekar consumed alcohol and the percentage of alcohol in his blood."*

14. Therefore, in the instant case, this Court finds that the second respondent/insurance company had failed to establish that the rider of the

two wheeler was under the influence of alcohol and hence, the insurance company is liable to pay compensation.

15. As regards quantum, as rightly contended by the learned counsel for second respondent/insurance company that the Tribunal had erroneously deducted 1/3rd of the income towards personal expenses. As per the judgment of the Hon'ble Supreme Court in the case of ***Sarala Verma and Or. Vs. Delhi Transport Corporation & Anr.*** Reported in ***[2009 (2) TN MAC 1 (SC)]*** and in the case of ***National Insurance company limited Vs. Pranay Sethi and Ors.*** reported in ***[(2017) 16 SCC 680],*** since the deceased was a bachelor, the Tribunal ought to have deducted 50% towards personal expenses.

16. Further, it is seen that the accident took place in the year 2018 and the deceased was 18 years old. In such circumstances, this Court is of the view that the notional income taken at Rs.10,000/- is meagre.

17. Considering the facts and circumstances of the case, the age of the deceased, his avocation prior to the accident and the year of accident, this Court is of the view that, the notional income can be fixed at Rs.12,000/-. Hence, the claimants are entitled to the compensation under the head of loss of dependency in the following manner:

12,000/2 +40%*12*18 = 18,14,400/-.

18. The compensation under the other heads are justified and no reasons for interference from this Court and the award amount of the Tribunal is modified as follows:

S.No.	***Particulars***	***Award of Tribunal***	***Modified amount***	
1.	Loss of Dependency	Rs. 20,16,000/-	Rs. 18,14,400/-	Reduced
2.	Loss of Estate	Rs. 16,500/-	Rs. 16,500/-	Confirmed
3.	Funeral Expenses	Rs. 16,500/-	Rs. 16,500/-	Confirmed
4.	Loss of Filial consortium	Rs. 88,000-	Rs. 88,000/-	Confirmed
		Rs. 21,37,000/-	**Rs. 19,35,400/-**	

19. In the result, both the Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.21,37,000/- is hereby reduced to Rs.19,35,400/- together with interest at the rate of

7.5% per annum from the date of petition till the date of deposit. The 1st appellant being the mother of the deceased is entitled to a sum of Rs.10,00,000/-, the 2nd appellant being the father of the deceased is entitled to a sum of Rs.9,35,400/- as compensation. The 2nd respondent/Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective shares of the award amount along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. No costs. Connected miscellaneous petition is closed.

14.07.2023

Index: Yes/No
Internet: Yes/No
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To

1.The Motor Accident Claims Tribunal,
Sub Judge, Rasipuram.

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

SUNDER MOHAN,J.

mp

C.M.A.Nos.948 and 1337 of 2023

14.07.2023