



C.M.A. No. 2001 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2001 of 2021

1. Kalaiyarasi
2. Minor. Abinesh
3. Kaliyamoorthi (Deceased)
4. Vijaya ... Appellants / Petitioners

Vs.

1. Ramesh
2. The Branch Manager,
United India Insurance Company Ltd.,
No.36/11, 1st Floor, Raghavan Complex,
Vellazha Street,
Ariyalur Taluk,
Ariyalur District. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 06.03.2021 passed in M.C.O.P. No. 203 of 2016 on the file of the Motor Accident Claims Tribunal / Additional District Sessions Court at Ariyalur.



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For Appellants : Mr. R. Jayaprakash
For R1 : No Appearance
For R2 : M/s. J. Vijayaraaghavan

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimants for enhancement of compensation awarded in M.C.O.P. No. 203 of 2016, dated 06.03.2021 on the file of the Motor Accident Claims Tribunal / Additional District Sessions Court at Ariyalur and also challenging the contributory negligence fixed on the deceased in this case.

2. For the sake of convenience, the parties are referred to herein according to their litigative status and rank before the Tribunal.

3. The claimants are the wife, son and parents of the deceased Purushothaman and their case is that on 28.05.2016 at about 6:00PM, the deceased Purushothaman was riding a Bajaj Discover two wheeler bearing Registration No.TN-32-AA-2910 along with two other persons on the Ariyalur to Sendurai road, while they reached near Irusukuttai, an Ashok Leyland Tipper lorry bearing Registration No.TN-61-E-8213, which came



behind them in high speed, dashed against the two wheeler of the deceased.

Due to which, the deceased Purushothaman sustained grievous injuries and succumbed, to injuries. A criminal case was also registered against the driver of the lorry in Cr.No.355/2016 under section 279, 337 and 304A of I.P.C. Due to loss of the deceased Purushothaman, the claimants have come forward with the claim petition seeking a compensation for a sum of Rs.25,00,000/- along with interest under section 140 and 166 of Motor Vehicles Act.

4. The first respondent is the owner of the Ashok Leyland Tipper lorry bearing Registration No.TN-61-E-8213 has not contested the claim and remained ex-parte. The second respondent - insurance company, who is the insurer of the Tipper lorry has contested the claim and contended that three persons were travelled in the two wheeler and this is violation of traffic rules and the rider of the two wheeler also has no valid driving licence at the time of occurrence and ridden the two wheeler in rash and negligent manner, which resulted in accident. The insurance company also further contended that the driver of the Tipper lorry was not having a valid driving licence at the time of occurrence, which is a violation of policy condition, hence prays



to dismiss the claim petition.

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5. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P.1 to P.14 were marked, on the side of the respondent no witnesses were examined and no witnesses were marked.

6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the rash and negligence on the part of the driver of the first respondent Ashok Leyland Tipper lorry bearing Registration No.TN-61-E-8213 is responsible for the accident and held that he is the tortfeasor. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.10,15,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization and directed the second respondent - insurance company to pay the compensation.

7. Aggrieved over the quantum of compensation fixed by the Tribunal, the claimants have come forward with this appeal seeking enhancement of compensation and the insurance company has not filed any appeal challenging the finding regarding the negligence and holding that the



driver of the Tipper lorry as tortfeasor in the accident.

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8. The learned counsel appearing for the claimants has submitted that the Tribunal has not properly fixed the notional income of the deceased and the compensation awarded under other heads are also on the lower side, hence prays to modify the same as per the norms followed by this Court.

9. Per contra, the learned counsel appearing for the Insurance Company has submitted that the deceased has ridden a two wheeler along with two persons without wearing a helmet and further contended that the rider of the two wheeler has no valid driving licence at the time of occurrence, hence prays to fix contributory negligence on the part of the deceased and deduct the compensation amount awarded by the Tribunal as per the ratio of contributory negligence fixed on the deceased.

10. Heard submissions made on both sides and perused the materials placed on record:

11. Based on the evidence placed on record, the Tribunal has held



that there is a contributory negligence on the part of the rider of the two wheeler and accordingly fixed contributory negligence to the extent of 10% on the deceased. The insurance company has also not filed any appeal challenging the tortuous act fixed on the part of the driver of the lorry and liability fixed on the insurance company more particularly the finding regarding the fact that three persons were travelled in the two wheeler and the rider of the two wheeler has no valid driving licence at the time of accident. However, in this appeal, the learned counsel appearing for the insurance company has submitted that contributory negligence fixed on the part of the deceased is on the lower side since, three persons were travelled in the two wheeler and the deceased succumbed due to head injuries since, he has no protective head gear while riding in a two wheeler.

12. Admittedly, in this case, there were no evidence adduced to show that the accident was happened due to travelling of three persons in the two wheeler, which resulted in any unbalance, which contributed to the accident. However, if the deceased had a helmet/ protective head gear at the time of accident, he would not have sustained grievous head injury and may not have lost his life. It is also elicited from the cross examination that the



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rider of the two wheeler was not possessed a valid driving licence. This Court is of the view that the contributory negligence fixed by the Tribunal to the extent of 10% is on the lower side and this Court judgment in ***C.M.A.(MD). No. 987 of 2014, Branch Manager (Oriental Insurance Company Limited) vs. Indirani and others*** has fixed contributory negligence of 20% for not wearing helmet, it has held as follows:

“11. Without wearing a helmet, no rider can drive the two wheeler and as per Section 129 of the Motor Vehicles Act, 1988, it is mandatory. Section 129 of the Motor Vehicles Act, 1988, is usefully extracted hereunder:

"129. Wearing of protective headgear.- Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear [protective headgear conforming to the standards of Bureau of Indian Standards]:

Provide that the provisions of this section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban:

Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit.

Explantion.- "Protective headgear" means a helmet which,-

(a) by virtue of its shape, material and construction, could reasonably be expected to afford to



the person driving or riding on a motor cycle a degree of protection from injury in the even of an accident; and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear."

13. Considering all the above aspects and submissions made by the learned counsel for the insurance company that deceased was not having a valid driving licence at the time of accident and not wore a helmet, this Court hereby modifying the overall contributory negligence to the extent of 25% on the part of the deceased.

14. With regard to the quantum of compensation awarded by the Tribunal, the learned counsel for the claimants contended that the notional income fixed for the deceased is only Rs.7,500/- per month. This Court is of the view that even though the income of the deceased was not proved by the claimants, the notional income fixed by the Tribunal is on the lower side, hence considering the fact that the accident has taken place in the year 2016 and the deceased was aged about 44 years at the time of accident, this Court is inclined to modify the monthly notional income of the deceased as



Rs.12,000/- per month.

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15. The Tribunal has rightly followed the dictum as laid down in *National Insurance Co. Ltd., vs. Pranay Sethi and other* reported in *[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]* and fixed 25% as future prospectus and as per *Sarla Verma and others Vs. Delhi Transport Corporation and others* reported in *[2009 ACJ 1298 SC : 2009 (6) SCC 121]*, the multiplier is fixed as '14' by considering the age of the deceased at the time of the accident, hence this Court finds no infirmity in the above fixing of future prospectus and multiplier adopted by the Tribunal and hence, confirms the same. After deducting one-third (1/3) of his monthly income towards his personal and living expenses, the compensation under loss of income / dependency with modified monthly notional income of Rs.12,000/-is assessed as follows:

Annual income (Rs.12,000/- x 12)	= Rs.1,44,000/-
Future prospects @ 25%	= Rs.36,000/-
Yearly income of the deceased	= Rs.1,80,000/-
Yearly contribution to his family(deducting 1/3)	= Rs.1,20,000/-
Applicable Multiplier	= 14



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Total compensation (Rs.1,20,000/- x 14)

= Rs.16,80,000/-

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16. The Tribunal has awarded Rs.40,000/- towards loss of spouse consortium but as per the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd., vs Nanu Ram*** reported in ***2018 ACJ 2018***, all the claimants are entitled for consortium. Hence, this Court is inclined to grant the claimants spouse consortium, parental consortium and filial consortium to the wife, son and mother of the deceased Purushothaman, respectively as per the Apex Court Judgment stated supra, accordingly, this Court is inclined to modify the loss of consortium to Rs.40,000/- to each of the wife, son and mother of the deceased. Whereas the other heads are concerned, the Tribunal has awarded just compensation and this Court is inclined to confirm the same.

17. Accordingly, the award passed by the Tribunal under various heads are hereby 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 reduced
1.	Loss of dependency	9,45,000/- (after deducting 10% contributory negligence)	16,80,000/-	Enhanced
2.	loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	40,000/-	1,20,000/-	Enhanced
	Total	10,15,000/-	18,30,000/-	Enhanced
	Deduction with respect to 25% Contributory negligence	---	4,57,500/-	
	Total Compensation	10,15,000/-	13,72,500/-	Enhanced

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,15,500/- is hereby enhanced to **Rs.13,72,500/- [Rupees Thirteen Lakh Seventy Two Thousand and Five Hundred only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The second 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



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of receipt of a copy of this judgment to the credit of M.C.O.P.No.203 of 2016 on the file of the Additional District and Sessions Judge, Motor Accidents Claims Tribunal, Ariyalur. On such deposit, the appellants 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 claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

16.11.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Ariyalur.
2. The Section Officer,



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V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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