



C.M.A.No.2028 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **K. RAJASEKAR**

C.M.A.No.2028 of 2021

1.Saraswathi
2.G.Vetri
3.V.Dharani

... Appellants / Petitioners

Vs.

1.R.Sivasubramanian

*(since R1 remained exparte before the Tribunal, his
presence may be dispensed with)*

2.HDFC ERGO General Insurance Company Limited,
RR Towers, II Floor,
No.94/9, TVK Industrial Estate,
Guindy, Chennai - 600 032.

... Respondents / Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal filed under
Section 173 of Motor Vehicles Act, 1988 against the judgment and decree
dated 20.11.2020 passed in M.A.C.T.O.P.No.436 of 2018 on the file of the
Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellants	:	M/s.M.Malar
For Respondent 1	:	Ex-parte
For Respondent 2	:	Mr.S.Arunkumar



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation amount awarded in the judgment and decree dated 20.11.2020 passed in M.A.C.T.O.P.No.436 of 2018 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

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

3. The case in brief is that on 25.12.2017 at about 00.30 hrs, while the deceased Praveen Kumar was riding the motorcycle bearing registration No.TN-02-BC-2568 proceeding at Gandhi Mandapam road, in front of Anna University out gate, Chennai, At that time, one car bearing registration No.TN-07-CA-5593 driven by its driver in a rash and negligent manner, hit on the motorcycle, thereby Praveen Kumar sustained grievous injuries and admitted in the Government Royapettah Hospital and he died. The driver of the car is responsible for the accident. The first respondent is the owner of the car and the second respondent is the insurer of the car are jointly liable to pay compensation to the petitioners.



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4. This petition has been filed for enhancement of compensation on the ground that the Tribunal has reduced the quantum of compensation by fixing the contributory negligence on the part of the deceased in this case. In the light of the issue had held that the driver of the first respondent drove a car in rash and negligent manner and hit against the two wheeler of the deceased which resulted in causing severe injuries to the deceased.

5. However, the Tribunal has held that the claimants have not produced any license of the deceased enabling him to drive the two wheeler and also held that he was not wearing helmet at the time of accident. Hence, the Tribunal has fixed 10% contributory negligence on the part of the deceased. It has been agitated in appeal on the ground that the non production of license alone is not the ground to fix the contributory negligence.

6. Before the Tribunal, on the side of the petitioner's 1st petitioner examined as PW.1 and marked Ex.P.1 and Ex.P.2. On the side of the respondents, Ex.P.3 to Ex.P.11 were marked.



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7. The Judgment of the Hon'ble Apex Court in ***Sudhir Kumar Rana Vs. Surinder Singh & Others reported in CDJ 2008 SC 862 and Dinesh Kumar.J. @ Dinesh J. Vs. National Insurance Co. Ltd. & Others reported in CDJ 2017 SC 1416***, the Hon'ble Apex Court has held that "if a person drives a vehicle without a license, he commits an offence. The same, by itself, does not lead to a finding of negligence as regards the accident". In this case also as contended by the learned counsel for the claimants that there is no findings of fact that the claimant has also negligently driven the vehicle, which resulted in the accident. It is evident to prove that he was riding in the two wheeler whereas the driver of the car has driven it in rash and negligent manner and hit on the Motor cycle.

8. This Court is of the view that fixing the contributory negligence for non production of license alone is not sufficient. Hence, the the same is liable to be set aside. However, the Tribunal has also taken note of the fact that at the time of accident, the deceased was not wearing helmet.



9. The Insurance Company also has a specific stand that the deceased was not wearing helmet at the time of accident which resulted in causing severe injuries on his head and thereby, they sought for fixing the contributory negligence.

10. The Division Bench Judgment of this Court in ***C.M.A.(MD). No. 987 of 2014, Branch Manager (Oriental Insurance Company Limited) vs. Indirani and others*** 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.

Explanation - "Protective headgear" means a helmet which,-



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(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."

11. Hence, in this case, when the specific stand taken by the Insurance Company that the claimant was not wearing helmet. The post mortem certificate has also supported the claim of the Insurance company that if the deceased was wearing helmet, he could not have sustained the above serious head injuries. The post mortem certificate - Ex.P2 supported almost 5 grievous injuries all over the head and the Doctor has also recorded the opening of Scalp as severe injuries. Evidence also placed on record that the statement that the deceased was died due to blunt injury to his head and abdomen.

12. This Court is of the view that the Insurance company has proven the case that the claimant was not wearing helmet at the time of accident. This Court has Consistently following the Division Bench Judgment cited



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supra and accordingly 10% contributory negligence has been fixed for not wearing of helmet at the time of accident. Hence, this Court is inclined to confirm the contributory negligence fixed by the Tribunal on the part of the deceased, for not wearing the helmet.

13. Accordingly, this Civil Miscellaneous Appeal is hereby dismissed. The Award and Decree passed by the Tribunal is hereby confirmed. There shall be no order as to costs.

29.11.2023

rjr

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The III Judge, (F.A.C.),
Court of Small Causes,
Motor Accident Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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