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CMA.No. 1306 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

CORAM:

THE HON'BLE MRS. JUSTICE N. MALA

Civil Miscellaneous Appeal No. 1306 of 2022

1. R. Nasrin Banu
2. M. Rahim Sait

... Appellants

Versus

1. C. Subramanian
2. The United India Insurance Company Limited
Divisional Office,
139, Kumaran Road, Tiruppur.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 16.03.2021 in MCOP.No. 290 of 2018 on the file of the Motor Accident Claims Tribunal, The Subordinate Judge, Sathyamangalam.

For Petitioners	: Mr. R. Nalliyappan
For R 1	: Mr. D.R. Arunkumar
For R 2	: Mr. J. Chandran



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JUDGMENT

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The appeal is filed by the claimants seeking enhancement of compensation.

2. On 25.05.2018, while the deceased was traveling as pillion rider in his motorcycle bearing Registration No. TN-86-B-9344, the driver of the Tractor bearing Registration No. TN-86-B-2559 drove the vehicle in a rash and negligent manner and hit against the motorcycle of the deceased causing grievous injuries to the deceased. According to the claimants, the deceased was aged about 22 years at the time of accident and he was pursuing BE Mechanical Engineering in a private college. Therefore, the parents of the deceased filed the claim petition claiming a sum of Rs.40,00,000/- as compensation.

3. Before the Claims Tribunal, the first respondent/owner 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 allegations made in the claim petition apart from disputing the negligence, liability



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and quantum of compensation.

4. Before the Claims Tribunal, one Rajalakshmi was examined as PW1 and one other witness was examined as PW2 and Ex.P1 to Ex.P12 were marked in support of the claim. On the side of the 2nd respondent/Insurance Company, one witness was examined as RW1 and Ex.R1 was marked.

5. The Tribunal on an assessment of the entire evidence on record, found that the deceased had contributed to the accident and apportioned the negligence of the deceased at 10%. The Tribunal after deducting 10% towards the contributory negligence of the deceased, assessed the compensation at Rs.14,30,800/- along with 7.5% interest and mulcted the liability on the second respondent/Insurance Company. Not satisfied with the award passed by the Tribunal, the claimants filed the above appeal for enhancement of compensation.

6. The learned counsel for the claimants submitted that the assessment of the income of the deceased by the Claims Tribunal was



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erroneous and unsustainable. The learned counsel further submitted that the Tribunal had failed to award any compensation towards “consortium” to the father of the deceased. The learned counsel therefore submitted that the award of the Tribunal deserved to be enhanced.

7. The learned counsel for the second respondent/Insurance Company, on the other hand, submitted that the award of the Tribunal was just, fair and reasonable and did not call for any interference in the appeal.

8. I have heard both the learned counsel for the appellant and the learned counsel for the second respondent/Insurance Company and perused the materials available on record.

9. It is seen that the deceased was doing III year engineering in a Private College at the time of the accident which took place in the year 2018. Considering the said facts, I am of the view that the income of the deceased may be assessed at Rs.15,000/-. 40% is added towards “future prospects” and 50% is deducted towards “Personal Expenses” of the deceased. Though the deceased was a pillion rider in the motorcycle at the



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time of accident as he was not wearing a helmet and as he died of head injuries, the Tribunal rightly deducted 10% towards “contributory negligence” of the deceased. The Tribunal ought to have awarded Rs.40,000/- towards “loss of consortium” to the father of the deceased.

10. In view of the above discussions, the award of the Tribunal is modified as follows:-

<i>Sl.No.</i>	<i>Heads under which the amount is awarded</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this court</i>
1	Loss of Permanent Disability	Rs.13,60,800	Rs.20,41,200
2	Funeral Expenses	Rs.15,000	Rs.15,000
3	Transport Expenses	Rs.15,000	Rs.15,000
4	Loss of Love and Affection	Rs.40,000	Rs.80,000
	Total	Rs.14,30,800	Rs.21,51,200

= Loss of Permanent Disability:

= Rs.15,000 + Rs.6,000 (40% future prospects) = Rs.21,000/-

= Rs.21,000 x 12 x 18 = Rs.45,36,000/-

= Rs.45,36,000 x 1/2 = Rs.22,68,000

= Rs.22,68,000 – Rs.2,26,800 (10% contributory negligence)

= Rs.20,41,200

11. The claimants are therefore, entitled to a sum of Rs.20,41,200/- towards “loss of dependency”. The claimants are further entitled to a sum of Rs.80,000/- towards “loss of consortium” at



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Rs.40,000/- to each of the claimants and Rs.15,000/- each towards loss of estate and funeral expenses. The claimants are totally entitled to Rs.21,51,200/- @ 7.5% interest as compensation.

12. It is submitted by the learned counsel for the appellants that the award of the Tribunal was already deposited by the second respondent/Insurance Company. Therefore, there shall be a direction to the 2nd respondent/Insurance Company to deposit the balance enhanced amount of Rs.7,20,400/- along with 7.5% interest within a period of 8 weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the same by making proper application before the Tribunal.

13. Accordingly, the Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

12.06.2023

Index:Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

MSM



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To

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1. The Subordinate Judge,
Motor Accident Claims Tribunal, Sathyamangalam.
2. The Section Officer, V.R. Section, High Court, Madras



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N. MALA, J

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