

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS JUSTICE R.KALAIMATHI

C.M.A.No.434 of 2023

1.Poongothai

2.Pichalu

3.Padmakumari

...Appellants

Vs.

1.Spartan Matriculation Hr. Sec. School,
No.570, Spartan International School,
CBSE, Kannadasan Street,
Chembakkam, Malayambakkam Village,
Chennai – 600 123.

2.Cholamandalam MS General Insurance Company Ltd.,
Hari Nivas Towers, 2nd Floor,
No.163-A, Thambu Chetty Street,
Chennai – 600 001.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 16.12.2021 made in MCOP.No.474 of 2018 on the file of the Motor Accident Claims Tribunal, (II-Small Causes Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj
For Respondents : Mr.N.Navaneetha Krishnan for R1
Mr.M.B.Raghavan for
M/s.M.B.Gopalan Associates for R2

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

This appeal is at the instance of the claimants, who are the father, mother and sister of the deceased Ramanan, who died in a motor accident that occurred around 11.30 a.m on 01.11.2017.

2.According to the claimants, while the deceased Ramanan was riding a motor cycle bearing Registration No.TN-09-CJ-7417 from West to East at the entrance of Koyambedu bridge, the bus bearing Registration No.TN-13-A-0725 belonging to the 1st respondent School driven by its driver in a rash and negligent manner came from behind and hit the motor cycle. As a result of the impact, the rider of the motor cycle was thrown off from the vehicle and he suffered head injuries and multiple injuries all over the body and died on the spot. Claiming negligence on the part of the driver

of the School bus as the cause for the accident, the claimants sought for a compensation of Rs.50,00,000/-.

3.To support the quantum, the claimants had averred that the deceased was working as Marketing Engineer and was earning about Rs.18,000/- per month. The fact that he was aged 23 years was also made as a ground to sustain the quantum.

4.The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested and the deceased also contributed to the accident to a certain extent. The fact that the deceased was not wearing a helmet was also projected as a defence. At trial, the 1st claimant / mother of the deceased was examined as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3. Exs.P1 to P16 were marked. On the side of the respondents, driver of the school bus was examined as R.W.1, the Deputy Manager of the Insurance Company was examined as R.W.2 and the Administrator of the School was examined as R.W.3. Exs.R1 to R13 were marked.

5.The Tribunal, on a consideration of the evidence on record concluded that the accident occurred due to rash and negligent driving of the school bus. It however, held that the fact that the deceased has died of head injuries and was not wearing a helmet would entail deduction of certain percentage of the compensation for contributory negligence. The Tribunal, fixed the quantum of said contributory negligence at 10%. As regards the quantum of compensation, the Tribunal fixed Rs.15,000/- as monthly income of the deceased and added 40% towards future prospects. The deceased being a bachelor, the Tribunal deducted 50% towards his personal expenses. By applying a multiplier of 18, it arrived the loss of dependency at Rs.22,68,000/-. The Tribunal added a sum of Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of love and affection, Rs.15,000/- towards funeral expenses. It deducted 10% towards contributory negligence and fixed the total compensation payable at Rs.21,04,200/-. Aggrieved, the claimants are on appeal.

7.We have heard Mr.K.Vardha Kamaraj, learned counsel for the appellant, Mr.N.Navaneetha Krishnan, learned counsel for 1st respondent

and Mr.M.B.Raghavan, learned counsel for the 2nd respondent.

8.While Mr.K.Varadha Kamaraj, learned counsel for the appellants would vehemently contend that in the light of the evidence of P.W.2 and R.W.1, the Tribunal was not right in concluding that the deceased was not wearing a helmet. He would also further contend that the award on the head of loss of love and affection has been fixed only at Rs.40,000/- whereas as per the judgment of the Honble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others** reported in **(2017) 16 SCC 680** each one of the dependents would be entitled to Rs.40,000/- towards loss of love and affection. Therefore, according to the learned counsel, the Tribunal should have awarded a further sum of Rs.80,000/- towards loss of love and affection, since there are three dependents in the case on hand.

9.Contending contra, Mr.M.B.Raghavan, learned counsel for the 2nd respondent would submit that even though R.W.1 has stated that he saw a helmet in the vicinity of the accident, that by itself would not go to show

that the deceased was wearing a helmet. He would also point out that the Tribunal has considered the nature of injury and arrived at a conclusion that if only the deceased was wearing a helmet at the time of accident, he would not have suffered such injury. This conclusion, according to Mr.M.B.Raghavan is reasonable and the same need not be disturbed. We have considered the rival submissions.

10.No doubt, P.W.1 has claimed that the deceased was wearing a helmet but she was not present at the time of the accident. R.W.1 has stated he saw a helmet in the vicinity of the accident. The Tribunal has taken into account the autopsy report, which shows the nature of injuries suffered and the cause of death. The Tribunal had come to the conclusion based on the said report that the death had occurred due to a head injury and it would not have happened, if only the deceased was wearing a helmet. We do not think, we can tinker with the said finding of the Tribunal based on Ex.P2 / autopsy report, which is prepared by an expert. Hence, we are not able to fault the Tribunal for deducting 10% towards contributory negligence.

11.As regards the quantum of compensation also, we find that the same is reasonable as the Tribunal has taken the gross salary at Rs.15,000/-, added 40% increase for future prospects, deducted 50% towards personal expenses, since the deceased was a bachelor and applied multiplier of 18. Therefore, we do not find any reason to interfere with the determination of the loss of dependency also.

12.However, as rightly point out by Mr.K.Varadha Kamaraj, the compensation granted for loss of love and affection has to be increased to Rs.1,20,000/- from Rs.40,000/-, since there are three dependents in the case on hand. If that increase is adopted, the compensation payable would be Rs.21,76,200/-. Thus, the total compensation arrived at Rs.21,76,200/-.

13.It is stated that the Insurance Company has satisfied with the award as granted by the Tribunal. The Insurance company will have six weeks time to pay the balance amount along with interest at 7.5% as granted by the Tribunal. The enhanced compensation i.e., Rs.72,000/- will be paid out to the mother of the deceased.

14. In view of the same, this Civil Miscellanoue Appeal is partly allowed. No costs.

(R.S.M.,J.) (R.K.M.,J.)
22.08.2023

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Internet:Yes

Index:No

Speaking

Nuetral Citation :No

To:-

The Motor Accident Claims Tribunal,
II-Court of Small Causes,
Chennai.

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