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C.M.A.Nos.1934 & 2739 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2023

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THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.Nos.1934 & 2739 of 2022
and CMP.No.14332 of 2022

C.M.A.No.1934 of 2022

Reliance General Insurance Co. Ltd.,
No.6, 4th Floor, Haddows Road,
Chennai – 600 006.

...Appellant

vs.

1.Divya
2.Nandhini
3.Jagadesh Kumar
(Minor rep. by his next friend and
natural Guardian Divya, 1st petitioner herein)
4.J.Venkatesh

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Decree and Judgment dated 14.12.2021 made in M.C.O.P.No.4790 of 2018, on the file of the Motor Accident Claims Tribunal (in the IV Court of Small Causes), Chennai, and be pleased to dismiss the above claim.

For Appellant : Mrs.C.Bhuvanasundari

For R1 to R3 : Mr.K.Varadhakamaraj



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For R4 : Demolished

WEB COPY C.M.A.No.2739 of 2022

1.Divya
2.Nandhini
3.Jagadesh Kumar
(Minor rep. by his next friend
and natural Guardian Divya,
1st petitioner herein) ... Appellants

Vs.

1.J.Venkatesh
2.Reliance General Insurance Co. Ltd.,
No.6, 4th Floor, Haddows Road,
Chennai – 600 006. ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow this appeal and be pleased to enhance the amount awarded in M.C.O.P.No.4790 of 2018 dated 14.12.2021 on the file of the Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai.

For Appellants : Mr.K.Varadhakamaraj

For R2 : Mrs.C.Bhuvanasundari

For R1 : Demolished

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C.M.A.Nos.1934 & 2739 of 2022

COMMON JUDGMENT

The appeal in C.M.A.No.1934 of 2022 is filed to set aside the Decree and Judgment dated 14.12.2021 made in M.C.O.P.No.4790 of 2018, on the file of the Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai, and be pleased to dismiss the above claim. The said appeal has been filed by the Insurance company challenging the compensation awarded by the Claims Tribunal.

2.The appeal in C.M.A.No.2739 of 2022 is filed to allow this appeal and to enhance the amount awarded in M.C.O.P.No.4790 of 2018 dated 14.12.2021 on the file of the Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai. The said appeal is filed by the claimants/petitioners questioning the deduction of 10% of compensation towards the negligence on the side of the deceased for not wearing helmet.

3.As both appeals raise common issues they are taken up together and



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disposed by this common judgment.

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4.The liability of the insurance company is not disputed. It is the case of the claimants that the claimants are the daughters, minor son of the deceased. The claimants case is that while their mother was riding pillion in the motor cycle of the first respondent, the first respondent drove the vehicle in a rash and negligent manner at a great speed without following the traffic rules hit a speed breaker, due to which their mother fell on the road and sustained head injuries and other injuries all over her body. Immediately, she was rushed to the hospital where she was treated as in-patient from 20.05.2018 and subsequently died on 21.05.2018. Therefore, the claimants filed the claim petition seeking a sum of Rs.40,00,000/- as compensation.

5.The first respondent, the owner of the two wheeler remained Exparte before the Tribunal.

6.The insurance company filed a counter denying all the averments in the claim petition and further disputed the negligence of the rider of the two



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wheeler before the Tribunal.

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7.In the Tribunal, the first claimant examined herself as PW1 and marked Ex.P1 to P11 and further examined PW2 as an eye witness and marked Ex.P12 through PW2.

8.The Claims Tribunal on a assessment of the entire evidence on record awarded a sum of Rs.22,01,000/- as compensation and deducted 10% towards the contributory negligence of the deceased. Hence the Tribunal awarded a sum of Rs.19,80,900/- as compensation along with interest at the rate of 7.5%. Aggrieved by the award of the Tribunal, the above appeals have been filed by the claimants and the insurance company.

9.PW1, the first claimant in her cross examination admitted that her mother was holding the helmet in her hands at the time of the accident. PW1 further admitted that her mother died of head injuries. It is therefore



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clear that the deceased was negligent in not wearing helmet and if she had worn the helmet at the time of the accident she would not have sustained head injuries which caused her death. On the facts of the case, I am of the view that the deduction of 10% from the compensation amount by the Tribunal cannot be faulted. In this regard useful reference is made to the Division Bench Judgment of this Court in the case of ***United India Insurance Company Limited Vs. Ravikumar in C.M.A.No.1739 of 2016 & CMP.No.13071 of 2016 and Cross Objection No.35 of 2018***. I therefore find no error in the finding of the Tribunal that the deceased contributed to the accident by not wearing the helmet. I am therefore of the view that the finding of the Tribunal on this aspect is to be confirmed.

10.The Insurance Company has filed the appeal questioning the quantum of compensation awarded by the Tribunal. In my view on the facts of the case and considering the avocation of the deceased, the assessment of the income at Rs.12,000/- per month is reasonable and the same is confirmed. The award of the Tribunal under the heads like loss of estate, funeral expenses, love and affection is just and fair and therefore, the



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compensation awarded by the Tribunal does not call for any interference.

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11.The Insurance Company is directed to deposit the entire compensation amount, within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimants shall be entitled to withdraw the said amount by making proper application before the Tribunal. The apportionment of compensation shall be as directed by the Tribunal.

12.In the result, both the appeals are dismissed. The Judgment and Decree dated 14.12.2021 made in M.C.O.P.No.4790 of 2018, on the file of the Motor Accident Claims Tribunal (in the IV Court of Small Causes), Chennai is confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

16.03.2023

Index : yes/no
Internet : yes/no
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To

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1.The Motor Accident Claims Tribunal
(IV Court of Small Causes),
Chennai.

2.The Section Officer,
V.R.Section,
High Court,
Madras.

N.MALA, J.

ah

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