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C.M.A.No.1542 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

CMA.No. 1542 of 2022

Sivappayee

...Appellant

Vs.

1.Sujaivel balaji

2.The United India Insurance Co. Ltd.,
Salem Main Road,
Kallakurichi.

....Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 59 of 1988 against the Judgment and Decree passed in M.C.O.P.No.359 of 2018 dated 18.10.2019 on the file of Motor Accident Claims Tribunal, III Additional District Court, Villupuram at Kallakurichi.

For Appellant : Mr.K.Suryanarayanan

For R-1 : No appearance

For R-2 : Mrs.R.Sreevidhya



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JUDGMENT

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This appeal is filed challenging the Award and Decree passed in M.C.O.P.No.359 of 2018 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Villupuram at Kallakurichi.

2. The appeal is filed by the claimant seeking enhancement of compensation.

On 16.09.2018, while the deceased was driving his two wheeler bearing Reg.No.TN-15-U-1975, the first respondent drove the truck in a rash and negligent manner, dashed against the deceased and caused his death.

3. According to the claimant, the deceased was aged 25 years at the time of the accident and as a mason was earning Rs.15,000/- per month. The claimant/ mother of the deceased therefore filed the claim petition seeking a sum of Rs.20,00,000/- as compensation for the death of her son in the motor accident.



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4. The first respondent/ owner of the Mini truck remained ex-parte and the claim petition was contested by the second respondent/Insurance company. The second respondent/Insurance company filed detailed counter denying all the averments made in the claim petition, apart from disputing the negligence, liability as well as quantum.

5. Before the Claims Tribunal, two witnesses were examined on the side of the claimant and Ex.P.1 to Ex.P.6 were marked in support of the claim. On the side of the respondent, neither any documentary evidence was marked nor oral evidence was let in.

6. The Claims Tribunal on an assessment of entire evidence on record held that the deceased did not possess a valid driving licence at the time of accident and thus contributed to the accident. The Tribunal further held that, as the deceased was not wearing helmet at the time of the accident and as he died due to head injuries, he contributed to the accident. The Claims Tribunal therefore deducted 35% of the compensation amount towards Contributory Negligence of the deceased (20% towards absence of licence and 15% towards



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non wearing of helmet).

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7. On the quantum of compensation, the Tribunal, in the absence of evidence on proof of income of the deceased, fixed notional income at Rs.7,000/- per month and awarded a total compensation of Rs.10,98,400/- along with 7.5% interest and mulcted the liability on the second respondent/Insurance company.

8. Aggrieved by the award passed by the Claims Tribunal, the claimant has filed the appeal questioning the finding of negligence as well as quantum of compensation.

9. The learned counsel for the appellant submitted that the Tribunal erroneously deducted 35% towards contributory negligence of the deceased, (i.e) 20% towards for not possessing valid driving licence and 15% towards non wearing of helmet. On the quantum of compensation, the learned counsel submitted that the Tribunal erred in fixing notional income at Rs.7,000/- per month, over looking that accident took place in the year 2018 and that the



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deceased was aged 25 years at the time of accident. On the aforesaid grounds, the learned counsel challenged the award of the Claims Tribunal.

10. The learned counsel for the second respondent/Insurance company, on the other hand, submitted that the finding of the Tribunal on negligence was unassailable on the facts of the case and that the quantum of compensation awarded by the the Tribunal was just and fair and did not call for any interference by this Court.

11. I have heard both the learned counsels and have perused the materials placed on record.

12. The Claims Tribunal held that the negligence of the first respondent's driver resulted in the accident. Having held so, the Tribunal deducted 20% towards contributory negligence of the deceased for riding his two-wheeler without driving license. In my view, in the absence of any evidence that the non-possession of driving licence by the deceased, as a fact contributed to the accident, the deduction of 20% towards contributory negligence for not



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possessing driving license is unsustainable. The Tribunal has deducted 15% for not wearing helmet, as the deceased died of head injuries. In my view, deduction at 15% is on the higher side and therefore 10% can be deducted towards contributory negligence of the deceased for not wearing helmet. It is no doubt true that no documentary evidence was filed by the claimant to prove the income of the deceased. It is seen that the deceased was 25 years at the time of accident and was a mason. We cannot expect any documentary evidence to establish income of the deceased. Therefore considering the age, avocation and the social economic situation prevailing in the year of 2018, I am of the view that notional income of the deceased can be fixed at Rs.12,000/- per month. The deceased was aged 25 years at the time of the accident and therefore 40% of the income is added towards future prospects and the multiplier '18' is adopted. The deceased died as a bachelor and therefore 50% is deducted towards personal expenses of the deceased. Therefore the loss of dependency is arrived at Rs. 18,14,400/- ($12,000 \times 40/100 = 4800 = 16,800 \times 12 \times 18 = 36,28,800/-$ and 50% is deducted towards personal expenses i.e. $36,28,800/2 = 18,14,400/-$)



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13. It is seen that Claims Tribunal awarded only Rs.10,000/- towards loss of love and affection. The claimant shall be entitled to Rs.14,000/- towards loss of love and affection instead of Rs.10,000/-. The award under funeral expenses and loss of estate is in conformity, with the Judgment of the Hon'ble Supreme Court in the case of *National Insurance Co. Ltd. vs Pranay Sethi* reported in 2017(2) TN MAC 609 (SC).

14. Thus the award of the Tribunal is modified as follows.

S.No	Various Heads	Award by Tribunal (amount in Rs.)	Award by this Court (amount in Rs.)
1.	Loss of Dependency	10,58,400/-	18,14,400/-
2.	Funeral Expenses	15,000/-	15,000/-
3.	Loss of Love and Affection	10,000/-	14,000/-
4.	Loss of Estate	15,000/-	15,000/-
	Total Compensation	10,98,400/-	18,58,400/-
	10% deduction towards contributory negligence	-	1,85,840/-
Total compensation awarded by this Court			16,72,560/- (18,58,400 1,85,840 16,72,560/-)
			- =



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15. The claimant shall therefore be entitled to Rs.18,58,400/- as enhanced compensation. As it is found that the deceased died due to head injuries 10% of the compensation amount is deducted towards contributory negligence of the deceased for not wearing helmet, therefore, a sum of Rs.1,85,840/- is deducted from enhanced compensation of Rs.18,58,400/-. Hence the claimant shall be entitled to Rs.16,72,560/- along with 7.5% interest as enhanced compensation.

16. It is submitted by the learned counsel for the second respondent/Insurance company that the entire award amount along with interest and cost was already deposited before the Tribunal. In the light of the said submission, there shall be a direction to the Insurance company to deposit the balance enhanced compensation along with 7.5% interest from the date of claim petition till the date of deposit within a period of twelve (12) weeks from the date of receipt of copy of this Judgment. On such deposit being made by the Insurance company, the claimant shall be entitled to withdraw the same by filing proper application before the Claims Tribunal.



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In the result, this Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.

26.06.2023

dsn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To
The III Additional District Judge,
Motor Accident Claims Tribunal,
Villupuram at Kalakurichi.

Copy to
The Section Officer,
V.R.Section,
High Court, Madras.



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N.MALA.J.

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