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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.1993 of 2022

1. P.Suriyakala
2. C.Parthiban ...appellants

Vs.

1. M.K.Simon
2. M/s.ICICI Lambard General Insurance
Company Ltd. Mumbai,
No.414, ICICI Lambard House,
Veer Savarkar Marg,
Near Siddhivinayak Temple,
Prabhadevi, Mumbai 400025.

Now functioning at
Opposite Ramesh Theatre,
S.P.Towers, I Floor,
Trichy Main Road,
Namakkal. ...respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment dated 06.07.2019 in MCOP.No.183 of 2016 on the file of Motor Accident Claims Tribunal and Additional District Court, Namakkal.

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For Appellant	:	Mr.A.Sathishkumar for Mr.C.Thangaraju
For Respondents		
for R1	:	M/s.Sarvabhawman Associates
for R2	:	Ms.R.Sreevidhya

J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN, J]

The claimants are on appeal, challenging the award of a sum of Rs.31,95,550/- as compensation for the death of Vinoth Kumar in a road accident that took place on 06.05.2015 at about 11.45 p.m. at Vignana Nagara Main Road, Bangalore.

2. According to the claimant, the deceased Vinoth Kumar was driving a two wheeler bearing Registration No.KA-02-EU-7373 and proceeding from west to east on the said 20 feet road. A Car bearing Registration No.KA-04-MJ-7813 belonging to the first respondent and insured with the second respondent came in the opposite direction on the wrong side and hit against the two wheeler. As a result of the impact, the deceased suffered fatal injuries and succumbed to the injuries on the next day.

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3. Contending that it was the negligence of the Car driver that caused the accident and claiming that the deceased was employed as a Software Engineer in the Oracle Financial Service Software Limited, Georegaon and he was earning about Rs.1,00,000/- per month, the claimants sought for a compensation of Rs.99,00,000/-.

4. The claim was resisted by the Insurance Company contending that the deceased was drunk and it was his driving in the drunken state, which resulted in the accident. It was also contended that there was no negligent on the part of the Car driver. The quantum of compensation claimed was termed as highly excessive on the basis that the deceased was not drawing Rs.1,00,000/- per month.

5. Before the Tribunal, the first claimant, who is the mother of the deceased, was examined as PW1 and one Sanjay Muthusamy and Vadivelan were examined as PWs.2 and 3. Exs.P1 to P30 were marked and the Postmortem report was marked as Ex.R1. On considering all the evidence, the Tribunal concluded that both the vehicles had contributed for the accident and apportioned the negligence at 50% each.

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6. The Tribunal took the monthly income of the deceased at Rs.44,546/- per month, added 40% towards future prospects, deducted 50% towards personal expenses and arrived at the total loss of dependency per annum at Rs.3,74,184/- . It adopted multiplier 17 and concluded that the total loss of dependency would be Rs.63,91,128/-. The Tribunal also added a sum of Rs.15,000/- each for Loss of Estate and Funeral Expenses and arrived at the total compensation at Rs.63,91,128/-. Having held that the deceased had contributed to the accident to an extent of 50%, the Tribunal deducted 50% of the compensation and awarded a sum of Rs.31,95,550/- as compensation to the claimants.

7. Mr.A.Sathishkumar, learned counsel appearing for the appellant would vehemently contend that the Tribunal has not justified in deducting 50% solely on the ground that the deceased was found to be under the influence of alcohol. Relying upon Ex.P4, Rough Sketch, the learned counsel would contend that it is the Car, which had come on the wrong side of the road and hit against the two wheeler and if only Car had maintained traffic discipline and stayed on the left side of the road, the accident would not have happened. He would also contend that mere presence of alcohol in

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the blood cannot be a ground to conclude that the deceased was driving under the influence of alcohol. In support of his submission, the learned counsel for the petitioner relied upon the judgment of ***Jiju Kuruvila and others vs. Kunjujamma Mohan and others in Civil Appeal Nos.4945-4946 of 2013,*** wherein Hon'ble Supreme Court held as follows:

> *"25. Post Mortem report, Ext.-A5 shows the condition of the deceased at the time of death. The said report reflects that the deceased had already taken meal as his stomach was half full and contained rice, vegetables and meat pieces in a fluid with strong smell of spirit.*
>
> *26. The aforesaid evidence, Ext.A5 clearly suggest that the deceased had taken liquor but on the basis of the same, no definite finding can be given that the deceased was driving the car rashly and negligently at the time of accident. The mere suspicion based on Ext.-B2, 'Scene Mahazar' and the Ext.-A5, post mortem report cannot take the place of evidence, particularly, when the direct evidence like PW.3, independent eye-witness, Ext.-A1 (FIR), Ext.-A4 (charge-sheet) and Ex.-B1 (F.I. statement) are on record."*

8. The learned counsel for the appellant would also find fault on the Tribunal for having fixed the income at Rs.44,546/- ignoring that in June 2015, the deceased had drawn a sum of Rs.1,06,958/-.

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9. Contending contra, Ms.R.Sreevidhya, learned counsel appearing for the Insurance Company would submit that the level of alcohol found in the blood is reflected by the Postmortem Report, Ex.R1, which would indicate that the deceased had consumed alcohol over and above the permissive limit. Drawing our attention to Ex.P5, the learned counsel would submit that the Postmortem Doctor has specifically recorded that the blood sample of 100 m.l. contain 79 milligrams of alcohol, which is more than twice the permitted level, viz., 30 milligrams. She would therefore urge that the Tribunal was right in fixing 50% as the quantum of negligence on the rider of the two wheeler/deceased.

10. We have considered the rival submissions. We shall deal with the question of negligence first. No doubt, the accident had occurred on the northern side of the road, which is the wrong side for the Car. But that itself cannot be taken as a point for rash and negligent driving. The accident had occurred almost at midnight and the deceased was found to have almost 79 milligrams of alcohol per 100 ml in his blood, which is more than twice the permitted limit. Therefore, we cannot go by the place of impact alone. The FIR is not very helpful in deciding the negligence. We have to necessarily

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go by Ex.P4, Rough Sketch, which shows that the accident had occurred on the northern side of East-West road. Once it is found that the deceased was under the influence of alcohol and that to above the permissible limit, we have to necessarily reduce the compensation to a certain extent, so that it does not result in bonanza for drunken driving. This Court in ***Duraivendhan vs. Hindu Bharathi Education Company and Others reported in MANU/TN/0391/2006*** had pointed out that the Court should not ignore the effect of alcohol and award compensation treating it as a normal case.

11. Either in the judgment of the Hon'ble Supreme Court in ***Jiju Kuruvila*** (referred to supra) by the learned counsel for the appellant or in the judgment of this Court in ***Duraivendhan*** (referred to supra) relied upon by the learned counsel for the Insurance Company there was no evidence regarding the percentage of the content of alcohol. But in the case on hand, we have Ex.R1, which shows that the blood sample of the deceased contain 79 milligrams of alcohol per 100 ml, which is very much over and above the accepted or permitted limit. Therefore we have to necessarily reduce the compensation for such violation. Drunken driving is prohibited and it is evinced that if we have to ignore the offence and award compensation, it

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will amount to rewarding illegality. Therefore, we do not find any warrant to interfere with the judgment of the Tribunal while fixing the quantum of negligence at 50% on the deceased and 50% on the driver of the Car.

12. Adverting to the quantum, the learned counsel appearing for the claimants would submit that the Tribunal ought to have taken the monthly income of the deceased at Rs.1,00,000/- as reflected in Ex.P29. We find that the said statement is based on a wrong impression or reading of Ex.P29. Ex.P29 has the details of earning of the deceased for April and June 2015. While in April 2015, the deceased had earned Rs.44,456/- and in June 2015, he was shown to have earned Rs.1,06,958/-, of which, Rs.60,629/- is for leave encasement, which cannot be included in the ordinary monthly salary. Therefore, the Tribunal was justified in taking the monthly income at Rs.44,546/-. It has added 40% towards future prospects, deducted 50% towards personal expenses and has applied multiplier 17, which are justified as per the decisions of the Hon'ble Supreme Court in ***Pranay Sethi and Sarala Verma.*** We therefore do not find any reason to tinker the quantum of compensation awarded by the Tribunal under the head Loss of Dependency. Adverting to the functional heads of compensation, we find that the Tribunal has not awarded any amount towards Filial Consortium. The

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claimants being the parents of the deceased are entitled to at least Rs.40,000/- per head towards Filial Consortium. Therefore, we have to add Rs.80,000/- to the compensation awarded by the Tribunal towards Filial Consortium and therefore, the total compensation payable by the Insurance Company would be 31,95,550 + (80,000 x 1/2), which will be equal to Rs.32,35,550/-.

13. In fine the appeal is partly allowed. The compensation granted by the Tribunal is modified granting a sum of Rs.32,35,550/-, which is rounded off to Rs.32,36,000/-. The Insurance Company has already paid the compensation as awarded by the Tribunal. This Court grants six weeks time to pay the enhanced amount with interest at 7.5% from the date of the claim petition till the date of deposit. No costs.

(R.S.M.J.,) **(K.G.T.J.,)**
10.02.2023

Index : No
Speaking order: Yes
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To

1. The Additional District Court,
   Motor Accident Claims Tribunal, Namakkal
2. The Section Officer,
   VR Section High Court, Madras.

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K.GOVINDARAJAN THILAKAVADI, J.

pvs

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