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C.M.A. No.1816 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1816 of 2023

1.Maragatham

2. Minor. Nethravathi

(Rep. by Guardian/ Next Friend Mother 1st Appellant)

Both are residing at

Kanagur Village,

Kallakurichi Taluk

...Appellants/Petitioners

Vs.

1.Palanivel

2.The Royal Sundaram General Insurance Co Ltd.,

No.1, Club House Road, 2nd Floor,

Subramaniam Building, Anna Salai,

Chennai – 600 002.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the order made in M.C.O.P.No.302 of 2018, dated 09.11.2022, on the file of the Motor Accident Claims Tribunal, III Additional District Court, Villupuram @ Kallakurichi.



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For Appellants : Mr.K.Suryanarayanan
For Respondents : R1 - Exparte
R2- Mr.G.Vasudevan

J U D G M E N T

The claimants have preferred the instant appeal challenging the findings with regard to negligence and the quantum of compensation.

2. The appellants filed the claim petition stating that on 31.07.2018 at about 11 a.m, while the deceased was riding his two-wheeler bearing Reg.No.TN-32-L-2257 in a public road, a Tanker Lorry bearing Reg.No. TN-15-Y-9661 belonging to the first respondent and insured with the second respondent came in a rash and negligent manner and dashed against the vehicle of the deceased as a result of which, the deceased sustained fatal injuries.

3. The first respondent remained ex-parte before the Tribunal.

4. The second respondent/insurance company filed a counter stating that the accident did not take place due to the negligence of the driver of the



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vehicle insured with the second respondent; that the deceased did not have valid driving license and did not wear helmet at the time of the accident; that in any case, the compensation claimed by the appellants was excessive and prayed for dismissal of the claim petition.

5. The appellants examined P.W.1 and P.W.2 and marked twelve documents as Exs.P1 to P.12. The second respondent examined R.W.1 to R.W.6 and marked seven documents as Exs.R1 to R7.

6. The Tribunal after taking into consideration the oral and documentary evidence held that the accident took place due to the negligence of the driver of the offending vehicle insured with the second respondent herein. However, the Tribunal fixed 30% contributory negligence on the deceased for not wearing helmet at the time of the accident and for not holding a valid driving licence. The Tribunal determined the compensation amount as Rs.33,97,696/- and directed the second respondent to pay a sum of Rs. 23,78,387/- (after deducting 30% contributory negligence on the deceased) to the appellants.



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7. The learned counsel for the appellants submitted that the contributory negligence fixed by the Tribunal for the violation of not holding a valid driving licence and for not wearing a helmet is excessive. The learned counsel further submitted that the evidence discloses that the accident took place only due to the negligence of the driver of the Tanker Lorry and submitted that no contributory negligence should be fixed on the deceased. The learned counsel further submitted that the deceased was born on 13.11.1967 and the accident took place on 31.07.2018; hence, the deceased was aged 50 years at the time of the accident. However, the Tribunal had erroneously reckoned the age as 51 years and applied the multiplier of '11'. The learned counsel further submitted that the award of the compensation under the other heads are also meagre and prayed for enhancement of compensation.

8. Since the first respondent remained ex-parte before the Tribunal, the learned counsel for the appellants made an endorsement to dispense with notice to the first respondent. Hence, notice to the first respondent is dispensed with.



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9. The learned counsel for the second respondent per contra, submitted that the Tribunal had correctly fixed the contributory negligence on the deceased and the compensation awarded by the Tribunal is just and reasonable and prayed for dismissal of the appeal.

10. Heard the learned counsel for the appellants as well the second respondent and perused the materials available on record.

11. On perusal of the records, it is seen that the appellants examined P.W.2/eyewitness to the occurrence to show that the accident took place entirely due to the negligence of the driver of the vehicle insured with the second respondent herein. However it is seen that the second respondent established the fact that the deceased did not wear a helmet at the time of the accident and he did not have a valid driving licence. This Court is of the view that in the facts and circumstances of this case, the Tribunal erred in fixing 30% contributory negligence on the deceased for the aforesaid violations. In view of the evidence that the deceased did not contribute to the accident,



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otherwise it would be just and reasonable to fix 15% contributory negligence on the deceased for the aforesaid two violations.

12. As regards compensation, it is seen that the Tribunal had fixed the notional income based on the salary certificate produced on the side of the appellant, and there is no infirmity in the said finding. However, the Tribunal had taken the age of the deceased as 51 years. As stated earlier, the deceased was born on 13.11.1967. The accident took place on 31.07.2018. Hence, the deceased was aged 50 years at the time of the accident. Thus, the correct multiplier applicable is '13'. Considering the number of dependents, 1/3 of the deceased income has to be deducted towards his personal expenses. The Tribunal determined the net income of the deceased per annum after deducting income tax including future prospects at Rs.4,41,503/-. There is no infirmity in the said finding. After deducting 1/3rd from the said amount, the annum income would be Rs.2,94,336/-. Hence, the compensation under the head “Loss of Dependency” has to be:



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Rs.2,94,336/- X 13 – Rs.38,26,368/-.

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Since Loss of Consortium has been awarded to the first appellant/wife of the deceased, the second appellant would be entitled to Rs.40,000/- under the head Loss of Love and Affection and the same is reduced from Rs.80,000/- to Rs.40,000/-. The compensation awarded by the Tribunal under the head Funeral Expenses is on the higher side hence, the same is reduced to Rs.15,000/-. The compensation awarded by the Tribunal under other heads is just and reasonable, and the same is confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.23,78,387/- (after deducting 30% contributory negligence) to Rs.33,45,913/- (after deducting 15% contributory negligence). The break-up is as follows:-

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	32,37,696/-	38,26,368/-	Enhanced
2.	Loss of	40,000/-	40,000/-	Confirmed



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	Consortium			
3.	Funeral Expenses	25,000/-	15,000/-	Reduced
4.	Loss of Love and affection	80,000/-	40,000/-	Reduced
5.	Loss of Estate	15,000/-	15,000/-	Confirmed
	Total	33,97,696/-	39,36,368/-	
		30% Contributory Negligence Rs.10,19,309/-	15% Contributory Negligence Rs.5,90,455/-	
	Net Compensation	Rs.23,78,387/-	Rs.33,45,913/-	Enhanced by Rs.9,67,526/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.23,78,387/- is hereby enhanced to Rs.33,45,913/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the award amount, now determined by this Court, less the amount already deposited, if any, within a period of six (6) weeks from the



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date of a receipt of copy of this Judgment. On such deposit, 1st appellant is permitted to withdraw Rs.18,45,913/- along with interests and costs from the award amount, less the amount if any, already withdrawn. The share of the second appellant/minor i.e., Rs.15,00,000/- along with interest and costs is directed to be deposited in any one of the Nationalised Bank till the minor appellant attain majority. However, first appellant, mother of the minor/second appellant is permitted to withdraw the accrued interest once in three months. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

21.09.2023

dk

Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No
To

- 1.The III Additional District Court,
Motor Accident Claims Tribunal
Villupuram @ Kallakurichi.
2. The Section Officer,
VR Section,
High Court,
Madras.

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SUNDER MOHAN, J

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