IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.A.No.1617 of 2020

The Divisional Manager,
National Insurance Co., Ltd.,
No.33, Promenade Road,
Cantonment,
Trichy District. ... Appellant

vs.

1.Santhi
2.Periyasamy
3.Nathiya
4.Ramachandran ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in M.C.O.P.No.1042 of 2016 dated 17.12.2019 on the file of the Motor Accident Claims Tribunal, (Mahila Court) Principal District Judge(FAC) at Perambalur.

For Appellant : Mrs.R.Sreevidhya
For R1 to R3 : Mr.T.Gopinath
for Mr.D.Boopal

JUDGMENT

Questioning the quantum as well as liability, the second respondent/Insurance Company has preferred this appeal against the

Judgment and decree passed by the Motor Accident Claims Tribunal, Mahila Court, Perambalur in M.C.O.P.No.1042 of 2016 dated 31.08.2012 .

2. The claim petition was filed under Section 140 and 166 of the Motor Vehicles Act for the death of one Gopinath, aged about 21 years, for claiming a compensation of Rs.40,00,000/-.

3. The Tribunal after hearing both sides arguments and upon considering the oral and documentary evidence available on record has granted compensation for a sum of Rs.18,44,400/- holding the second respondent/ Insurance Company liable to pay the said compensation.

4. The learned counsel for the appellant/Insurance Company would strenuously argue that totally three persons travelled in a two wheeler and the deceased was a second pillion rider. Therefore, he has also contributed to the accident. The learned counsel would further contend that as per the Rough Sketch - Ex.R.1, the accident had occurred in the middle of the road. Therefore, it is clear that the rider of the two wheeler has

contributed negligence to the accident.

5. The learned counsel would further argue that the deceased died on head injury. Therefore, it is clear that he did not wear helmet. For these omissions and commissions on the part of the deceased, she would stress upon to fix 15% contributory negligence on the part of the deceased. The Tribunal has fixed the notional income of the deceased at Rs.12,000/- p.m without any documentary evidence is on the higher side.

6. The learned counsel would also stress upon the point that the Degree Certificate of the deceased Gopinath was not filed. Only Course Completion Certificate alone was marked as Ex.P.6, which reveals the fact that he did not complete the degree. Considering the above said aspects, she would also putforth that the notional income of the deceased be fixed at Rs.10,000/- p.m. and she prayed for reduction of compensation.

7. Per contra, the learned counsel appearing for the respondents 1 to 3/claimants would argue that due to non-wearing of helmet by pillion rider, resulted in accident, cannot be taken as a negligence on the part of the

pillion rider. For better appreciation of his arguments, he relied upon the Judgment of the Division Bench of this Court in **National Insurance Co., Ltd., vs. R.Vimala and Others,** C.M.A.Nos.713 to 715 of 2015, wherein, it has been held that though the rider travelled along with three pillion riders in the motorcycle, as the eye witness has stated that the accident occurred due to the rash and negligent driving of the driver of the Nineth respondent/first respondent's Tata Vica car bearing Registration No.PY-01-AK-0986 and also taking note of yet another fact that Ex.P.1 FIR was registered against the said driver of the offending vehicle, it cannot be concluded that due to the negligence of the pillion rider, the accident occurred. He would also further argue that just because of the death injury, the pillion seems to have lost his life, it cannot be presumed that because of not wearing the helmet has contributed to the accident. The monthly income fixed by the Tribunal for the person who has done the Diploma in Civil Engineering is on the higher side. Therefore, he prayed for dismissal of this appeal.

8. The manner in which the accident had taken place is not in dispute. The mother, father and unmarried sister of the deceased Gopinath

filed a claim petition vide MCOP.N.1042 of 2016 for claiming a compensation of Rs.40,00,000/-. It is the evidence of P.W2, on 17.09.2015 at about 22.50 hours along Kulithalai to Manaparai main Road near Ayyarmalai, whilst the rider of pulsar motorcycle bearing Registration No.TN.47.AU.1395 was proceeding from south to north on the left side of the road along with two pillion riders, at that time, a Ashok Leyland Multi Axle Goods Lorry bearing Registration No.TN.55.AK.3300 came in a rash and negligent manner from the opposite direction, came on the right side of the road dashed against the pulzar motorcycle. The deceased was thrown away and succumbed to the injuries.

9. The claim petition was resisted by the second respondent/Insurance Company stating that admitting the policy is in force in respect of the lorry, liability was not admitted on the part of the driver of the lorry. The claimants were put to strict proof of age, income of the deceased, mode and manner of the accident.

10. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the respondents 1 to

3/claimants and also perused the materials evidence available on record.

11. In order to substantiate the claim petition, on the claimants' side, mother of the deceased Smt.Santhi and one eye witness have been examined as P.W1 and P.W.2. Seven documents were marked as Exs.P.1 to P.7. Ex.P.6 is the Course Completion Certificate (DCE) of the deceased Gopinath. On the side of the second respondent/Insurance Company, Administrative Officer of Insurance Company viz., Mr.Ashokumar, was examined as R.W.1 and four documents were marked. Ex.R1 is the Certificate copy of Rough Sketch.

12. It is seen from the case records that the mother of the deceased has spoken about the details of the claim petition. P.W.2 viz., Mr.Viswanathan, has stated that due to the rash and negligent driving of the driver of Ashok Leyland lorry, accident occurred. On the side of the second respondent/Insurance Company, the Administrative Officer has spoken about the insurance policy. Through him, Rough Sketch, Observation Mahazar and Motor Vehicle Inspection Report of both the vehicles involved

in the accident have been marked. Therefore, with regard to manner of the accident, P.W.2 has given the details. Relying upon the same, the Tribunal concluded that because of the rash and negligent driving of the driver of the lorry, the accident happened.

13. The learned counsel appearing for the appellant/Insurance Company would stress upon the fact that mere perusal of Rough Sketch would reveal the fact that the accident occurred due to the rash and negligent driving of the driver of the two wheeler, accident occurred.

14. As the contents of the rough sketch is not in dispute, a perusal of Ex.R.1 – Certificate copy of Rough Sketch reveals the fact that when the two wheeler was proceeding from south to north on the left side of the road. Whereas, the lorry was proceeding from Kulithali to Manaparai, the scene of occurrence indicated reveals that south to north direction, not in the middle of the road as putforth by the learned counsel for the appellant. Therefore, in all probabilities as rightly contended by the respondents 1 to 3 /claimants, lorry had proceeded on the right hand side and hit on the

motorcycle which came in the opposite direction. Therefore, it is made clear before the Tribunal that the accident had occurred due to the rash and negligent driving of the driver of the lorry and not the two wheeler.

15. The learned counsel for the appellant/Insurance Company would strenuously argue that the rider travelled along with two pillions thereby the deceased pillion has invited the accident.

16. Be that as it may, a clear finding is that only due to the rash and negligent driving of the driver of the lorry, accident occurred. In the given circumstances, this Court is not in a position to fully appreciate the above line of arguments. The learned counsel further contended that for not wearing the helmet, the deceased sustained head injury and died. Therefore, 50% to be fixed as contributory negligence on the part of the deceased as mentioned supra. When the negligence is fixed on the driver of the lorry driver, the deceased has contributed to the accident as mentioned herein, does not hold water.

17. That apart, it is the evidence of P.W.1 that her son was earning a

sum of Rs.20,000/- per month, working in a private concern at Trichy. To evidence the same, Course Completion Certificate has been marked as Ex.P.6. Therefore, taking into account, the date of accident and the aforesaid details of the income of the deceased Gopinath, this Court deems fit to fix the income of the deceased at Rs.11,000/- per month. As per Ex.P.5 – Transfer Certificate, deceased's date of birth is mentioned as 19.11.1994 and his age is fixed as 21 years. Multiplicand adopted is 18. As per the law laid down by the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd.** Vs. **Pranay Sethi and Others** reported in **2017 (2) TN MAC 609 (SC),** the Apex Court has standardized the details of future prospects while fixing the income of the deceased in respect of persons, self-employed or on fixed salary, while computing the income. Future prospects for the age group of persons below 40 years, 40% to be added with monthly income.

18. In ***Smt. Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*** reported in 2009(2) TN MAC 1 (SC), the Hon'ble Supreme Court has standardized the details of deduction for personal and living expenses in case, deceased is a bachelor, 50% has to be deducted. Based on the

aforesaid observation, loss of dependency is calculated as follows:-

i) Age of the deceased : 21 years

ii) Multiplicand to be applied : 18

iii) Notional income fixed as : Rs.11,000/-

40% of future prospects of monthly income : Rs.4,400/-

= Rs.11,000/- + Rs.4,400 - 50% x 12 x 18
= Rs.15,400/- _ 50% = Rs.7,700/-

= Rs.7,700/- x 12 x 18

= Rs.16,63,200/-

19. As regards granting of filial consortium, in **National Insurance Co. Ltd.** Vs. **Pranay Sethi,** reported in **2017 (2) TN MAC 609 (SC),** wherein, it has been held that parents in case death of child, is entitled for a sum of Rs.40,000/- towards loss of filial consortium. As such, mother and father of the deceased Gopinath are entitled for a sum of Rs.40,000/- each towards loss of filial consortium.

20. In all other aspects, the award of the Tribunal appears to be

reasonable and I see no reason to interfere with the same. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:

S.No.	***Description***	***Amount awarded by Tribunal (Rs.)***	***Amount awarded by this Court (Rs.)***	***Award confirmed or enhanced or granted or reduced***
1	For loss of dependency	18,14,400/-	16,63,200/-	Reduced
2	For loss of Estate	15,000/-	15,000/-	Confirmed
3	For loss of filial consortium to the respondents 1 & 2	-	80,000/-	Awarded
4	For funeral expenses	15,000/-	15,000/-	Confirmed
	Total	18,44,400/-	**17,73,200/-**	Reduced by **Rs.71,200/-**

21. Thus, the compensation awarded by the Tribunal is reduced from Rs.18,44,400/- to **Rs.17,73,200/-** which would carry interest at the rate of 7.5% per annum.

22. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.

(ii) The compensation awarded by the Tribunal is reduced from Rs.18,44,400/- to Rs.**17,73,200**/- .

(iii) The Appellant / Insurance Company is directed to deposit the modified compensation amount i.e., **Rs.17,73,200**/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.1042 of 2016 on the file of the Motor Accident Claims Tribunal, Mahila Court, Perambalur, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the respondents 1 to 3 / claimants are at liberty to withdraw the same as per apportionment made by the Tribunal. Consequently, connected miscellaneous petition is closed. No costs.

31.07.2023

Index : Yes/No
Speaking / Non-speaking order

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R.KALAIMATHI, J.,

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To:

1. The Motor Accident Claims Tribunal,
   (Mahila Court) Principal District Judge(FAC)
   Perambalur,

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

C.M.A.No.1617 of 2020

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