# IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2023

CORAM:

**THE HON'BLE MRS. JUSTICE N.MALA**

C.M.A.No.400 of 2021
and
C.M.P.No.2623 of 2021

The Divisional Office,
The United India Insurance Co., Ltd.,
144-B, Kalpana Road,
Udumalpet Post, Udumalpet Taluk,
Tirupur District. ... Appellant

Vs

1.S.Easakkimuthu
2.E.Murugalakshmi
3.Minor E.Nivetha
4.Minor E.Raghavan
5.P.Thirunavakkarasu ... Respondents

**Prayer:** Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.180 of 2015 on 10.07.2020 on the file of the III Additional District and Sessions Court, Tiruppur at Dharapuram.

For Appellant : Mr.J.Chandran

For Respondents : Mr.MA. P.Thangavel, for RR1 to 4
Mr.D.R.Arunkumar, for R5

**J U D G M E N T**

This Civil Miscellaneous Appeal is filed against the judgment and decree passed in M.C.O.P.No.180 of 2015 dated 10.07.2020 on the file of the III Additional District and Sessions Court, Tiruppur at Dharapuram.

2. This appeal is filed by the Insurance Company challenging negligence as well as quantum.

3. The brief facts necessary for the consideration of the appeal are as follows:-

On 01.11.2014 at about 01.45 pm, while the deceased was travelling as a pillion rider in a motorcycle towards West, on Palani to Udumalpet on the Southern edge of the road near Venjamadai, the first respondent car, driven by its driver, came in a rash and negligent manner, in the same direction and hit behind the motorcycle, due to the impact, both the rider and pillion rider sustained severe injuries. The deceased-Ashokraja was admitted in Kovai Medical Hospital and subsequently, succumbed to the injuries sustained by him in the accident. The deceased was aged about

19 years and was a 3rd year student of Diploma in Mechanical Engineering. The parents, minor sister and minor brother of the deceased filed the claim petition, claiming a sum of a sum of Rs.25,00,000/- along with 12% interest as compensation.

3.1. The first respondent, the driver of the car, contested the claim petition by filing a counter in which he disputed that his negligence resulted in the accident and further submitted that as the vehicle was covered by a valid policy, the second respondent / Insurance Company was liable to pay the compensation on his behalf.

3.2. The second respondent / Insurance Company also filed a counter wherein it denied all the averments made in the claim petition and specifically stated that the rider of the two wheeler was not holding valid driving license and therefore, the negligence, if any, was attributed only on the rider of the two wheeler. The Insurance Company further submitted that the claim made under various heads were exorbitant and excessive.

3.3. Before the Tribunal, on the side of the claimants, 3 witnesses were examined as P.W.1 to P.W.3 and 19 documents were marked as Exs.P1 to P19. On the side of the respondent, Ex.R1, the copy of the Insurance Company policy was marked and no witness was examined.

3.4. The Tribunal, on an assessment of the entire evidence on record, awarded a sum of Rs.24,90,000/- as compensation along with 7.5% interest. Aggrieved by the judgment and decree of the Tribunal, the appellant / Insurance Company has filed this appeal challenging the negligence as well as quantum.

4. Learned counsel for the appellant / Insurance Company submitted that as the rider of the two wheeler was not holding valid driving license, the negligence, if any, is attributed only on the rider of the two wheeler and as such, the driver of the insurer could not be said to have been negligent. The learned counsel on the issue of quantum submitted that the Tribunal erred in adding 50% towards future prospects and deducting 1/4$^{th}$ towards the deceased personal expenses instead of 50% as the deceased died as a bachelor. The counsel therefore submitted that the award passed by the Tribunal was unsustainable and the same deserved to be interfered with.

5. Learned counsel for the claimants on the other hand submitted that the deceased was a pillion rider in the motorcycle. Therefore, the appellant / Insurance Company cannot be heard that the negligence was

that of the motorcyclist as he did not possess the driving license. The counsel further submitted that the award of the tribunal is fair and facts of the case and therefore, the same deserves to be sustained.

6. Mr.D.R.Arun Kumar, learned counsel appeared for the fifth respondent and submitted that the liability if any is only that of the appellant / Insurance Company as there was a valid driving license covering the persons involved in the accident.

7. Heard the learned counsel for the appellant and respondents and perused the materials placed before this Court.

8. It is seen that the deceased was travelling as pillion rider in the motorcycle and the accident occurred due to the negligence of the car driver who hit the motorcycle from behind. The contention of the appellant / Insurance Company is that the motorcyclist did not possess a valid driving license and that the accident occurred only due to the negligence of the rider of the motorcycle. Merely because the rider of the motorcycle did not possess a driving license, it cannot be said that negligence should be

attributed to him. Negligence of the rider of the motorcycle should be proved as a fact and cannot be inferred from absence of driving license. The deceased was a pillion rider and therefore a third party to the car. As far as the car is concerned there was a valid policy covering the accident hence, the Insurance Company cannot wriggle out of its liability, on the specious ground that rider of the motorcycle did not possess a valid driving license. Therefore, I find no infirmity in the finding of the Tribunal and the same is confirmed.

9. On the contention of the appellant / Insurance Company that the Tribunal ought to have added only 40% towards future prospects and deducted 50% towards the deceased personal expenses, I am of the view that the same is tenable and in confirmity with the judgment of the Hon'ble Supreme Court in ***Pranay Sethi's*** case.

10. The Tribunal, in assessing income of deceased took the notional income at Rs.10,000/- per month, added 50% towards future prospects and fixed the total income at Rs.15,000/- per month. However, as rightly pointed out by the appellant / Insurance Company's counsel 40%

only should be added towards future prospects. If 40% is added towards future prospects then the notional income will be (Rs.10,000/- + Rs.4,000/- = Rs.14,000/-). As the deceased died as a bachelor, 50% should be deducted towards personal expenses. The monthly income on deduction of 50% would be Rs.7,000/-. The multiplier appropriate to the age of the deceased is 18. By applying the said multiplier, the total compensation payable to the claimants towards loss of dependency will be Rs.7,000 X 12 X 18 = Rs.15,12,000/- .

11. **Loss of estate:** The Tribunal failed to award any compensation towards loss of estate, and as per the ratio laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited V. Pranay Sethi and others,*** reported in ***2017 (2) TN MAC 609 (SC),*** the claimants of the deceased are entitled to a sum of Rs.15,000/- towards loss of estate.

12. **Funeral Expenses:** The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses and the same is enhanced to Rs.15,000/-.

13. **Transport Expenses:** The Tribunal has awarded a sum of Rs.10,000/- towards transport expenses and the same is confirmed.

14. **Loss of love and affection:** The Tribunal has awarded a sum of Rs.40,000/- towards loss of love and affection to the claimants 1 to 4. I am of the view that each of the claimants would be entitled to Rs.40,000/- towards loss of love and affection.

15. In view of the said discussions, I am of the view that the award of the Tribunal needs to be modified and the same is modified as follows:-

| Sl.No. | Particulars | Tribunal | Court |
|---|---|---|---|
| 1 | Loss of Dependency | Rs.24,30,000/- | Rs.15,12,000/- |
| 2 | Funeral Expenses | Rs.10,000/- | Rs.15,000/- |
| 3 | Transport Expenses | Rs.10,000/- | Rs.10,000/- |
| 4 | Loss of Estate | | Rs.15,000/- |
| 5 | Loss of Love and Affection | Rs.40,000/- | Rs.1,60,000/- |
| | **Total** | **Rs.24,90,000/-** | **Rs.17,12,000/-** |

16. The Tribunal, has apportioned the compensation as Rs.8,45,000/- each to the parents of the deceased and Rs.4,00,000/- each to

the minor sister and minor brother of the deceased. Therefore, I am of the view that the compensation awarded has to be apportioned as Rs.8,50,000/- to the mother of the deceased, Rs.2,62,000/- to the father of the deceased and Rs.3 lakhs each to the minor siblings of the deceased. It is submitted by the learned counsel appearing for the Insurance Company that the entire award amount has already been deposited in pursuance of the interim order passed by this Court. The claimants 1 and 2 are entitled to withdraw the amount awarded to them and the share of the minors shall be deposited in Nationalised Bank drawing interest. After attaining majority, the minor claimants 3 and 4 shall be entitled to withdraw the same by making proper application before the Court. The appellant / Insurance Company is entitled to withdraw the balance amount deposited, if any.

17. In the result, this Civil Miscellaneous Appeal is partly allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

**27.03.2023**

Index: Yes/No
Neutral Citation: Yes/No
AT

**N.MALA, J.**

AT

To
1.The Motor Accidents Claims Tribunal,
III Additional District and Sessions Court, Tiruppur at Dharapuram.

2. The Section Officer,
VR Section,
High Court, Madras.

C.M.A.No.400 of 2021 and
C.M.P.No.2623 of 2021

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