



C.M.A.No.2063 of 2014

M.DHANDAPANI., J.

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This matter is listed under the caption “For Being Mentioned” at the instance of the learned counsel for the appellant.

2. Learned counsel for the appellants/claimants submitted that though one of the grounds on which the order of the Tribunal was challenged related to an order of pay and recovery not having been passed though a finding has been recorded, the said ground has inadvertently omitted to be considered, as erroneously, the order of the Tribunal had given direction to the owner of the vehicle to pay the compensation.

3. It is the further submission of the learned counsel that the finding of the Tribunal with regard to the insurer being liable to pay the compensation arises on the basis of the deposition of R.W.1, who has deposed that the driver of the two-wheeler was having a valid driving licence. Though R.W.1 has deposed that with the licence which the driver/1st respondent was in possession, he cannot drive two wheeler, however, the said deposition is against the consistent ratio of this Court that even in the absence of a valid



driving licence, insofar as the third parties are concerned, when there is a valid insurance policy, the insurer is liable to compensate the claimants and, thereafter, recover the compensation from the owner of the vehicle. Therefore, the insurer has to be directed to pay the compensation and, thereafter, recover the same from the owner of the vehicle, viz., the 1st respondent.

4. This Court gave its anxious consideration and also perused the order passed, where it reveals that inadvertently an error has crept in, wherein the finding relating to pay and recovery, though approved by the Tribunal, which has been confirmed by this Court, the operative portion in both the order of the Tribunal as also this Court, the said direction does not find reflection as there is a categorical deposition by R.W.1 that the driver of the vehicle, P.Ramesh, was in possession of a four-wheeler driving licence, though he cannot drive two-wheeler, which deposition is against the ratio laid down by the courts with regard to order relating to pay and recovery.

5. In the aforesaid backdrop, the following paragraphs shall stand included after para-7 in the order dated 05.10.2023 :-



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“7.1 With regard to the contention relating to possession of driving licence by the 1st respondent, there is a clear deposition by R.W.1 that the driver of the vehicle was in possession of a valid driving licence for four wheeler, though he cannot drive two wheeler. However, as rightly pointed out by the learned counsel for the appellant, it has been the consistent view of the courts that even in the absence of possession of a valid driving licence, the insurer is liable to indemnify the insured by compensating the claimants and, thereafter, recover the compensation from the insured/owner of the vehicle.”

6. Further, in para-11 of the order dated 5.10.2023, the direction with regard to the 2nd respondent/insurer to pay the compensation to the claimants and, thereafter, recover the same from the owner of the vehicle has inadvertently been shown as if the 1st respondent has been directed to pay the compensation. Accordingly, Para-11 of the order dated 5.10.2023 stands replaced with the following paragraph:-

“11. The appeal is allowed and the impugned award of the Tribunal is modified by enhancing the compensation amount from Rs.3,32,080/- to



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Rs.10,24,240/- and the 2nd respondent/insurer of the vehicle is directed to pay the compensation to the claimants/appellants herein and, thereafter, recover the same from the owner of the vehicle in the manner known to law. The 2nd respondent is directed to deposit the enhanced compensation as awarded by this Court along with interest at 7.5% p.a. from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. From the enhanced amount as awarded by this Court above, claimants/appellants 2 to 6 would be entitled to a sum of Rs.40,000/- each (Rupees Forty Thousand only) along with proportionate interest and the balance award amount along with interest shall be paid to the 1st appellant. The Tribunal, upon deposit of the amount, is directed to transfer the amount, apportioned above, directly to the bank account of the respective claimants/appellants herein within a period of two weeks thereafter. Further, liberty is granted to the 2nd respondent/insurer to recover the aforesaid compensation paid from the owner of the vehicle in accordance with law. There shall be no order as to costs. Consequently, connected miscellaneous petition is



closed.”

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7. Registry is directed to carry out the necessary corrections to the order dated 5.10.2023 and issue fresh order copy free of cost to the parties.

12.06.2024

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M.DHANDAPANI., J.

rap/GLN

C.M.A.No.2063 of 2014

12.06.2024



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05.10.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.2063 of 2014

1. P.S.Santha
2. R.Pandian
3. R.Elavarasan
4. R.Siva Elango @ Moorthy
5. R.Tamilselvan
6. R.Karunanidhi

... Appellants

Vs.

1. Syed Sulaikan
(Set ex parte in the Trial Court)
2. The New India Assurance Co. Ltd.,
No.46, Moore Street,
Chennai – 600 001.
3. C.Arul
(Set ex parte in the Trial Court)

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 22.09.2004 made in M.A.C.T.O.P.No.5106 of 2001 on the file of II Judge Motor



Accidents Claims Tribunal, (Small Cause Court) at Chennai.

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For Appellants : M/s.A.Subadra for M/s.M.Malar

For Respondents : Mr.R.Neethiperumal for R2

No Appearance [R1 & R3]

JUDGEMENT

Aggrieved by the compensation granted by the Motor Accident Claims Tribunal, (Small Cause Court) at Chennai. in M.A.C.T.O.P.No.5106 of 2001 dated 22.09.2004, the claimants are before this Court.

2. Brief facts which are necessary for disposal of this appeal are as follows:-

(i) The appellants are the wife and sons of the deceased. On 07/08.07.2000, at about 4:00a.m., when the deceased was walking in the extreme corner of the road, a motor cycle bearing registration No.TN 07 E 6521 came from north to south direction and dashed the deceased, which resulted in sustaining grievous injuries. Thereby, the deceased sustained fatal



injuries and died. After the said accident, the appellants/ claimants have filed a claim petition claiming compensation of Rs.6,00,000/-.

3. Before the Tribunal, the appellants examined two witnesses viz., P.W.1 and P.W.2 and marked four documents viz., Ex.P.1 to Ex.P.4. On the side of respondents they examined two witnesses viz., R.W.1 and R.W.2 and marked one document viz., Ex.R.1. After adjudication, the Tribunal awarded a sum of Rs.3,32,080/- as compensation to the claimants. Not satisfied with the same, the present appeal has been filed by the claimants seeking enhancement.

4. The learned counsel appearing for the appellants submitted that due to the rash and negligent driving by the rider of the two wheeler / first respondent, the deceased lost his life. Therefore, definitely the insurance company has to indemnify the claimants for the loss suffered by them, due to the death of the deceased. He further submits that though Tribunal has observed that the insurance company is liable to pay the compensation to the claimants and to recover the same from the first respondent, however, the Tribunal failed to consider the same in the later portion of the award. Hence,



she prayed this Court to modify the award passed by the Tribunal.

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5. He further submits that the deceased was employed as driving instructor in Tamil Nadu State Express Transport Corporation Ltd. earning a sum of Rs.10,000/- per month. In order to substantiate his income, the claimants have marked Ex.P.3 before the Tribunal which is the salary certificate of the deceased. However, the Tribunal ought to have considered the salary of the deceased as Rs.9,000/- per month, without doing so, it has fixed the net salary of the deceased to the tune of Rs.4,845/- per month, which is on the lower side. Hence, she prays to enhance the same. He further submits that though the age of the deceased was 58 years at the time of accident, the Tribunal has fixed the multiplier at 8 instead of 9 which is wholly unsustainable and the same is not in consonance with the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***. Accordingly, he prayed to pass appropriate orders.

6. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation,



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which does not require any enhancement. Accordingly, he prays for dismissal of the appeal. He further submits that admittedly the first respondent was not in possession of the valid two wheeler licence, the Tribunal has rightly fixed the negligence on the part of the first respondent / rider which is perfectly in order. Hence, he prayed to pass appropriate orders.

7. Heard the learned counsel for the appellants and the learned counsel appearing on behalf of the second respondent and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellants/claimants is with regard to the quantum of compensation awarded. It is claimed by the appellants that though the deceased had earned a sum of Rs.9000/- per month, the Tribunal has taken into consideration only a sum of Rs.4,845/- which is the net salary of the deceased. It has been the view of the courts that even a housewife is entitled to monthly income to be fixed for the purpose of qualifying their work for



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the purpose of quantifying the amount receivable by them. Hence, applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in **2014 (1) TANMAC 459**, fixing a notional income of Rs.9,000/- and adding future prospects at 15%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in **2017 (16) Supreme Court Cases 680**, the total income per month is quantified at Rs.10,350/-. Deducting 1/5th towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.8,280/- per month and the deceased being aged about 58 years, as evidenced from the records, adopting the multiplier of 9 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in **(2009) 6 SCC 121**, the loss of income to the family is arrived at Rs.8,280/- * 12 * 9 = Rs.8,94,240/-, which is worked out as follows :-

<i>Loss of Income</i>	<i>Amount (in Rs.)</i>
Notional income (Per month)	9,000
Add: Future Prospects (Rs.9,000 x 15%) (Per month)	1,350
	10,350
Less: Personal expenses (1/5 th) (Rs.10,350/- x 1/5) (Per month)	2,070
	8,280



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<i>Loss of Income</i>	<i>Amount (in Rs.)</i>
Notional income (per annum) (Rs.8,280/- x 12)	99,360
Multiplier	9
Total	8,94,240

9. A sum of Rs.10,000/- has been granted under the head “loss of love and affection”, which is on the lower side and the same is enhanced to the tune of Rs.20,000/- to each sons of the deceased (5 * Rs.20,000/- = Rs.1,00,000/-). A sum of Rs.10,000/- has been granted under the head "loss of consortium", which is also on the lower side and the same is enhanced to a sum of Rs.20,000/-. The Tribunal has granted a sum of Rs.2,000/- under the head of "funeral expenses", which is also on the lower side and the same is also enhanced to a sum of Rs.10,000/-.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of Income	3,10,080/-	8,94,240/- (enhanced)
Loss of love and affection	10,000/-	1,00,000/-



<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
(Rs.20,000/- x 5)		(enhanced)
Loss of consortium	10,000/-	20,000/- (enhanced)
Funeral Expenses	2,000/-	10,000/- (enhanced)
Total	3,32,080/-	10,24,240/-

11. The appeal is allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.3,32,080/-** to **Rs.10,24,240/-**. The first respondent is directed to deposit the said amount to the credit of M.C.O.P.No.5106 of 2001 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. The said award amount shall be apportioned amongst the appellants/claimants as per the Award of the Tribunal. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the claimants through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs. Consequently,



connected miscellaneous petition is closed.

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05.10.2023

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

1. The Motor Accident Claims Tribunal,
(Small Cause Court) at Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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