



C.M.A.No.1821 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1821 of 2023
and C.M.P.No.17746 of 2023

Reliance General Insurance Company Ltd.,
Reliance House, No.66, Haddows Road,
Nungambakkam,
Chennai – 34.

... Appellant

Versus

1.V.Kalpana

2.Venkatesan

3.Deepak.P.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 20.12.2022 passed in M.C.O.P.No.3236 of 2015, on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.P.Suresh Srinivasan

For Respondents : Mr.S.Sankaralingam



C.M.A.No.1821 of 2023

JUDGMENT

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This appeal has been filed by the appellant/Insurance Company challenging the compensation awarded by the Tribunal in M.C.O.P. No.3236 of 2015, dated 20.12.2022.

2.The claim petition was filed stating that on 28.08.2013, at about 22.00 hours, when the deceased was riding TVS Champ bearing Registration No.TN-22-BH-1357 in West Mamabalam Govindan Road, a rider of the Motorcycle bearing Registration No.TN-38-BT-5846 came in a rash and negligent manner and dashed against the deceased, due to which, the deceased sustained head injury and died. Thus, the respondents 1 and 2 are entitled for compensation.

3.The 3rd respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal.

4.The appellant/Insurance Company filed counter denying all the averments made in the claim petition and stated that the rider of the two wheeler did not possess driving license at the time of accident. Hence,



C.M.A.No.1821 of 2023

the appellant is not liable to pay compensation to the respondents 1 and 2 and prayed for dismissal of the claim petition.

5.Before the Tribunal, the respondents 1 and 2 examined two witnesses and marked Ex.P.1 to Ex.P.20 on their side. On behalf of the appellant/Insurance Company, R.W.1 was examined and Ex.R1 was marked.

6.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 3rd respondent, who was under the influence of alcohol and directed the appellant being the insurer of the offending vehicle to pay a sum of Rs.15,07,500/- as compensation to the respondents 1 and 2, with liberty to recover the same from the 3rd respondent for violation of policy conditions.

7.Aggrieved over the award passed by the Tribunal, the appellant/Insurance Company filed the present appeal challenging the findings of the Tribunal with regard to the negligence and quantum of compensation.



C.M.A.No.1821 of 2023

WEB COPY 8. Though the instant appeal has been filed challenging the findings with regard to the negligence also, the learned counsel for the appellant is unable to appoint any error as regards finding of the negligence. As regards quantum, he submitted that the deceased was a minor school going student and had ridden the motorcycle without driving license; that the Tribunal had fixed a higher notional income of Rs.12,000/-, which has to be reduced and prayed for allowing the appeal.

9. Learned counsel for the respondents 1 and 2, per contra, submitted that though the evidence suggested that the accident took place only due to the negligence of the driver of the offending vehicle, the Tribunal has fixed 20% contributory negligence on the deceased. Further, the deceased was a bright student and hence, the notional income fixed at Rs.12,000/- per month is just and reasonable. The Tribunal has not awarded consortium as per the judgment of Hon'ble Apex Court in the case of *Sarla Verma & others vs. Delhi Transport Corporation & another* reported in *2009 (2) TNMAC 1 SC*; the Tribunal ought to have awarded a sum of Rs.80,000/- under the head "Loss of consortium" and therefore, prayed for dismissal of the appeal.



C.M.A.No.1821 of 2023

WEB COPY 10.The only question involved in the instant appeal is whether the quantum of compensation awarded by the Tribunal is just and reasonable.

11.On a perusal of the records, this Court finds that the respondents 1 and 2 had examined PW2 - eye witness to the occurrence to prove the manner of the accident. The appellant has not let in any contra evidence to disprove the evidence of PW2. Therefore, the findings of the Tribunal that the accident took place on account of rash and negligence driving by the offending vehicle, cannot be faulted. Further, the Tribunal found that the deceased who had ridden the motorcycle was minor, aged 17 years and fixed 20% contributory negligence on the deceased. This Court, in similar circumstance had fixed contributory negligence for such violation. However, considering the fact that the rider of the offending vehicle was also under the influence of alcohol, this Court feels that the contributory negligence fixed on the deceased is on the higher side and it would be just and reasonable to fix 15% towards contributory negligence for the violation of the policy condition committed by the deceased.



C.M.A.No.1821 of 2023

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12.As regards quantum of compensation, this Court finds that the accident took place in the year 2013 and the notional income fixed by Tribunal is on the higher side. The deceased was a school going student. Considering the age, year of accident and the cost inflation index, this Court is of the view that it would be just and reasonable to fix Rs.10,000/- per month as notional income of the deceased. The deceased was aged 17 years at the time of accident. By applying multiplier 18, granting 40% enhancement towards future prospects and deducting 50% towards personal expenses, the loss of dependency is calculated as follows:

$$\text{Rs.14,000 (10000 X 40\%)} \times 12 \times 18 \times 1/2 = \text{Rs.15,12,000/-}.$$

The Tribunal had awarded a sum of Rs.40,000/- towards loss of consortium, which is meagre. The respondents 1 and 2 are each entitled to a sum of Rs.40,000/- and hence the compensation is enhanced from Rs.40,000/- To Rs.80,000/-. The amount awarded by the Tribunal under other heads is just and reasonable and hence the same are confirmed.



C.M.A.No.1821 of 2023

Thus, the compensation awarded by the Tribunal is modified as follows:

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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	18,14,400	15,12,000	Reduced
2.	Loss of Consortium	40,000	80,000	Enhanced
3.	Loss of Estate	15,000	15,000	Confirmed
4.	Funeral Expenses	15,000	15,000	Confirmed
	Total	18,84,400	16,22,000	Reduced by Rs.1,28,800/-
	Contributory negligence	3,76,880 (@ 20%)	2,43,300/- (@15%)	
	Net Compensation Payable	15,07,500	Rs.13,78,700/-	

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,07,500/- is hereby reduced to Rs.13,78,700/- 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 appellant/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a



C.M.A.No.1821 of 2023

period of four (4) weeks from the date of a receipt of copy of this Judgment, at the first instance and thereafter, recover the same from the 3rd respondent. On such deposit the respondents 1 and 2 are permitted to withdraw their respective shares along with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected miscellaneous petition is closed.

17.08.2023

rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The Motor Vehicle Accident Tribunal,
III Court of Small Causes,
Chennai.

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



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C.M.A.No.1821 of 2023



WEB COPY



C.M.A.No.1821 of 2023

SUNDER MOHAN, J.

rst

C.M.A.No.1821 of 2023
and C.M.P.No.17746 of 2023



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C.M.A.No.1821 of 2023

17.08.2023