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C.M.A.No.4088 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 20.06.2023

Judgment Pronounced On : **17.07.2023**

CORAM

THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE D.BHARATHACHAKRAVARTHY

C.M.A.No.4088 of 2019
and
C.M.P.No.23073 of 2019

Shriram General Insurance Co.Ltd.,
No.8, RICCoIndustrial Area, Sitapura,
Jaipur, Rajasthan – 302 022.

... Appellant

Versus

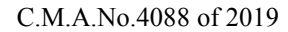
1.Mr. Gopalappa @ Gopal
2.Mrs. Puttamma
3.Mrs. Vasantha @ Yastha
4.Mrs. Varalakshmi
5.Minor Prathiba
6.Mr. S. Rajinikanth

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 28th March 2019, made in M.C.O.P.No.295 of 2017, on the file of Motor Accident Claims Tribunal (Additional District Court), Hosur.

For Appellant : Mr. S. Dhaksnamoorthy

For Respondents : Mr. S.P.Yuvaraj (for R1 to R5)
: No Appearance (for R6)



D.BHARATHA CHAKRAVARTHY, J

2. The Learned Counsel for the appellant would submit that having found that the deceased was travelling in a motorcycle which was neither insured and nor the deceased had any valid license and further he was not wearing a helmet, the Tribunal ought to have fixed the contributory negligence at least at 50% and not at 10%. Learned Counsel for the appellant further submitted that the notional income fixed by the Tribunal at Rs.19,000/- is without any basis. Therefore, the compensation is excessive.

3. As regards the contributory negligence, It is seen that when the deceased was proceeding in a two wheeler along with the pillion rider, the erring vehicle, which was driven in a rash and negligent manner being a Tipper Lorry, came from behind and hit the two wheeler on the rear side.



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and thus, causing the accident and the death of the deceased. In that view of the matter, the sole and proximate cause for the accident was only the rash and negligent driving of the Lorry. But, however, only considering the reasonable care, the Tribunal had taken the contributory negligence at 10% and also considering the fact that there was no license produced by the claimants. Any person irrespective of his license or wearing the helmet would have met the same fate. Therefore, the only question is not taking reasonable care of himself. In that view of the matter, we are unable to accept the contention of the learned Counsel for the appellant in this regard. The Tribunal has rightly apportioned the negligence at 90% : 10%.

4. As far as the second submission made by the learned Counsel for the appellant is concerned, it is seen that the Tribunal has taken Rs.19,000/- as notional income. No doubt, by consistent orders of this Court, in C.M.A.Nos.2210 & 2218 of 2021 dated 13.06.2023, and etc., the notional income has to be taken only as Rs.15,000/-, in this case, firstly it was contended on behalf of the claimants that apart from being a student of N.T.T.F College, Bangalore, in respect of the course, first year IT Basic, the deceased was also buying and selling computers and mobiles and was earning a sum of Rs.15,000 /- per month, even though there is no proof in



respect thereof.

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5. Secondly, even assuming that by taking Rs.19,000/- as the notional income which is on the higher side, it is seen that the Tribunal had given 50%, deduction for the personal expenses and in this regard, it has been held in oft-quoted Judgment of the Hon'ble Supreme Court of India, in the case of *Sarla Verma and others Vs.Delhi Transport Corporation and another*.¹, even though, normally in the case of a bachelors, 50% is to be given, in a given case where if the mother is a widow or if the claimants' dependants are more in number, the Court has got discretion even to reduce the amount. In this case, even though the father is also one of the claimants, it can be seen that the mother and three younger sisters are there, and the family was very much dependant on the deceased for their livelihood.

6. Thirdly, it can be seen that in respect of filial consortium, only Rs.40,000/- is awarded, while filial consortium can be awarded for both parents totalling R.80,000/-. If all these circumstances have to be taken and the compensation is re-calculated, the sum awarded by the Tribunal is neither excessive nor unreasonable.

¹ 2009 ACJ 1298 SC



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7. In the result, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes
Speaking Order
Neutral citation : Yes

(J.N.B,J.) (D.B.C, J.)
17.07.2023

klt

To

1. The Motor Accident Claims Tribunal
(Additional District Court), Hosur.
2. The Section Officer,
V.R. Section, High Court of Madras.



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**J. NISHA BANU, J.
and
D.BHARATHA CHAKRAVARTHY, J.**

klt

Pre-Delivery Judgment in

C.M.A.No.4088 of 2019
and
C.M.P.No.23073 of 2019

17.07.2023