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C.M.A.No.4103 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM :

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

C.M.A.No.4103 of 2019

1.Munusami

2.Kavitha

... Appellants/Petitioners

Vs.

1.M.J.Muthu

2.United India Insurance Co. Limited,
No.134, Silingi Building, 4th Floor,
Greens Road,
Chennai – 600 006.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order made in M.C.O.P.No.5417 of 2017, dated 08.08.2019 on the file of III Court of Small Causes, Motor Accidents Claims Tribunal at Chennai.

For Appellants : Mr.N.M.Elumalai

For Respondents : No appearance (Refused) [R1]
Mr.P.Sankaranarayanan[R2]



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JUDGMENT

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The claimants aggrieved by the Award fixing 25% of the liability on the deceased and on the ground that quantum awarded is very meagre, are before this Court.

2. The appellants are parents/dependents of the deceased Manikandan. On 03.09.2017 at about 12.00 hrs, the deceased was riding his motorcycle bearing Reg.No.TN 03 S 7482 proceeding at Killi Road nearing to Schenker India Pvt. Ltd., Manjampakkam. At that time, the driver of the Water Tank lorry bearing Reg.No.TN 05 AK 7799 came behind in a rash and negligent manner, endangering public safety dashed against the two wheeler of the deceased and had caused the accident. Due to that, the deceased Manikandan sustained multiple grievous injuries and died on the spot. Thereafter, the claimants who are legal heirs of the deceased have filed a claim petition before the Tribunal claiming a compensation of Rs.25,00,000/- under various heads.

3. Before the Tribunal, the first petitioner Munusamy, who is the father of the deceased, examined himself as P.W.1 and examined one Devakumar as an eyewitness as P.W.2 and marked Ex.P.1 to Ex.P.13. No witnesses were examined nor any documents were marked on the side of the respondents. The



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Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.12,54,000/-. Challenging the same, the claimants are before this Court.

4. The learned counsel appearing for the appellants submitted that, the deceased possessed valid driving licence at the relevant point of time, however, during the course of accident, he lost his driving licence, thereby, the appellants are not able to produce the same before the Tribunal, for which, the Tribunal has fastened 25% negligence on the deceased and 75% negligence on the second respondent/Insurance Company, which is not sustainable. Mere non-production of the driving licence will not deprive the rights of getting compensation by the appellants/dependants. In the present case, the appellants have already established the negligence as against the second respondent/Insurance Company. Instead of fastening the entire liability as against the second respondent/Insurance Company, fastening 75% negligence as against the second respondent/Insurance Company and 25% negligence as against the deceased is not sustainable. The Tribunal ought to have fastened the entire liability as against the second respondent/Insurance Company.

5. Further, he submitted that, at the time of accident, the deceased was employed as Load Man and was earning a sum of Rs.600/- per day and totally,



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a sum of Rs.18,000/- per month. However, the Tribunal has fixed the notional income at Rs.7,500/-, which is grossly inadequate and the same requires enhancement. Accordingly, he prays for allowing the appeal.

6. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that, the initial burden lies on the appellants to prove that their deceased son possessed a valid driving licence to drive the motorcycle. It is a preliminary issue and it has to be satisfied before the Tribunal. In the present case, at the time of accident, the deceased has not possess valid driving licence. In the absence of driving licence, the Tribunal has rightly fastened 25% negligence on the deceased, which does not require any interference. Accordingly, he prays for dismissal of this appeal.

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

8. Admittedly, the appellants have not marked any documents before the Tribunal to prove that the deceased has possessed valid driving licence at the time of accident, for which, the Tribunal has fixed 25% negligence on the deceased, which is not sustainable. Hence, the negligence on the part of the



deceased is reduced from 25% to 10%.

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9. Further, it is the claim of the appellants that, at the time of accident, the deceased was aged about 23 years and he was working as a Load Man and was earning more than Rs.12,000/- per month. 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 the purpose of quantifying the amount receivable by them. 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.12,000/- and adding future prospects at 40%, 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.16,800/-. Deducting 50% towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.8,400/- per month and the deceased being aged about 23 years, as evidenced from the records, adopting the multiplier of 18 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 $\text{Rs.8,400/-} * 12 * 18 = \text{Rs.18,14,400/-}$, which is worked out as follows :-



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<i>Loss of Income</i>	<i>Amount in Rs.</i>
Notional income (Per month)	12,000
Add: Future Prospects (Rs.12,000 x 40%) (Per month)	4,800
	16,800
Less: Personal expenses (50%) (Rs.16,800/- x 50%) (Per month)	8,400
	8,400
Notional income (per annum) (Rs.8,400/- x 12)	1,00,800
Multiplier	18
Total	18,14,400

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

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of dependency	11,34,000/-	18,14,400/- (enhanced)
2	Loss of love and affection	80,000/-	80,000/-
3	Transport Expenditure	10,000/-	10,000/-
4	Loss of Estate and Funeral	30,000/-	30,000/-
		12,54,000/-	19,34,400/-

11. Accordingly, the appeal is partly allowed and the impugned Award of the Tribunal is modified, enhancing the compensation amount from **Rs.12,54,000/-** to **Rs.19,34,400/-**. The second respondent-Insurance Company



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is directed to deposit 90% of the said amount to the credit of M.C.O.P.No.5417

of 2017 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 six (6) weeks from the date of receipt of a copy of this judgment. The Appellants/claimants shall forfeit the remaining 10% of the award amount due to the contributory negligence of the deceased. On such deposit being made, the claimants are permitted to withdraw the award amount, along with accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. The claimants are directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee has been produced by the claimant. There shall be no order as to costs in the present appeal.

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Index : Yes / No

Speaking order / Non-speaking order

Netrual Citation Case : Yes / No

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To

1.The III Court of Small Causes, Motor Accidents Claims Tribunal at Chennai.



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

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M.DHANDAPANI, J.

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