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C.M.A.No.1917 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.Nos.1917 of 2023

and

C.M.P.No.18578 of 2023

Reliance General Insurance Co. Ltd.,
Legal Claim Office, No.6, 6th Floor,
Reliance House, Haddows Road,
Nungambakkam, Chennai - 600 034.

...Appellant

Vs.

1.M.Valli

2.S.Senthil Kumar

...Respondents

Common:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 18.07.2022 passed in MCOP.No.2972 of 2019 by the Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

For Appellant : Mr.C.Bhuvanasundari

For Respondent : Mr.Amar D.Pandiya for R1



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J U D G M E N T

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(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The Insurance Company is on appeal. Challenge is to the award of a sum of Rs.23,38,000/- as compensation for the death of one Thirumal in a road accident that occurred on 01.11.2018 at about 6.30 p.m.

2.The claimant, who is the mother of the deceased sought for compensation of Rs.69,47,000/-, contending that the accident occurred due to the rash and negligent driving of the driver of the lorry, which came in the opposite direction and dashed against the two wheeler on which, the deceased was riding along with one Fazhulur Rahman as a pillion rider. As a result of the impact, both the rider and the pillion rider suffered severe injuries and the rider died on the spot. Contending that her son was employed with M/s.Auroflux Technologies and was earning Rs.20,000/- per month, the mother sought for a compensation of Rs.69,47,000/-.

3.The claim was resisted by the Insurance Company contending that the accident occurred due to the rash and negligent driving of the rider of the two wheeler / the deceased. It also claimed that the employment and the monthly income have been boosted up to seek higher compensation.

4.At trial, the sole claimant, Valli was examined as P.W.2 and one



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M.Elamvazhuthi, an eye-witness was examined as P.W.3. A representative of the employer was examined as P.W.4 and the appointment order was marked as Ex.P40. The bank statement was also produced. The Tribunal, on the assessment of the evidence came to the conclusion that the accident occurred due to the negligence on the part of the lorry. It took the monthly income of the deceased at Rs.15,000/-, added 40% towards future prospects and deducted 50% towards personal expenses. Applying 18 as multiplier, arrived at the total loss of dependency at Rs.22,68,000/-. It also awarded a sum of Rs.15,000/- as loss of estate, Rs.15,000/- towards funeral expenses and Rs.40,000/- towards loss of consortium. Thus, the Tribunal awarded a sum of Rs.23,38,000/- as compensation. Aggrieved, the Insurance Company is on appeal.

5.Mrs.C.Bhuvanasundari, learned counsel for the appellant / Insurance Company would submit that the deceased was not wearing a helmet at the time of the accident. Drawing our attention to the various injuries that have been suffered by the deceased, the learned counsel would submit that the death was only due to the failure on the part of the deceased



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to wear a helmet. She would also draw our attention to the evidence of P.W.3 wherein, P.W.3 has admitted that non-wearing of helmet is an offence.

The learned counsel would therefore, submit that the Tribunal ought to have fixed a certain amount of negligence on the part of the deceased on his failure to wear a helmet. It is also the contention of the learned counsel that the monthly income is on the higher side.

6.Contending contra, Mr.Amar D.Pandiya, learned counsel for the 1st respondent / claimant would submit that there is no plea in the counter that the deceased was not wearing a helmet. He would also draw our attention to the cross-examination of P.W.3, an eye-witness, and submit that there is no cross-examination on the question of wearing of helmet by the deceased. The learned counsel would also point out that the income taken for an Engineering graduate in 2019 at Rs.15,000/- is too low and even contributory negligence is to be attributed. Considering the fact that the income taken is low, the compensation is just and reasonable. We have considered the rival submissions of the learned counsel on either side.

7.True, law makes it mandatory for every person, who rides a two



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wheeler to wear a helmet. It is also, to a certain extent, true that the said law is followed more in breach than in observance. When it comes to the quantum of negligence for non-wearing of helmet, the Courts have always adopted a low percentage of 15. Contributory negligence, as has been held by this Court and the Hon'ble Supreme Court, is a question of fact and it has to be established like any other Court. There cannot be a presumption on contributory negligence. P.W.3, an eye-witness to the accident has been examined. He has not in chief-examination, adverted to the wearing of helmet. However, we find no suggestion was made by the learned counsel for the Insurance Company in the cross-examination to the effect that the rider was not wearing a helmet. The only suggestion that is made is as to whether he knows the wearing of helmet is mandatory, for which, he answered in the affirmative. We therefore, find total lack of evidence on this aspect.

8.As we already adverted to the Tribunal that monthly income taken at Rs.15,000/-. Admittedly, the deceased was an Engineering Graduate and was working in a private company earning Rs.20,000/- per month, according to the pay slip. We also do not find any cross-



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examination on the quantum of income claimed. Even assuming that the rider was not a wearing helmet and we should make certain deduction towards the failure to wear a helmet, we find that such deduction would result in compensation being lowered to a very unreasonable extent. Though evidence has been produced to show that the deceased was earning monthly Rs.20,000/-, the Tribunal has taken the monthly income only at Rs.15,000/-. This itself is a lower fixation. We will not be justified in reducing the compensation further fixing the contributory negligence.

9.We do not see any reason to interfere with the award, since the award is just and reasonable. This Civil Miscellaneous Appeal therefore, fails and it is accordingly, dismissed. No costs. Consequently, connected miscellaneous is closed.

(R.S.M.,J.) (R.K.M.,J.)
01.09.2023

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Nuetral Citation : No

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The Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.



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and
R.KALAIMATHI, J.

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