



CMA(MD)No.227 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE N. MALA

CMA(MD).No. 227 of 2023

G.Annalakshmi

Appellant

vs.

1.Shanmugakani

2.The Branch Manager,
National Insurance Company Ltd.,
No.7/1, West Car Street,
Sivakasi,
Virudhunagar District.

3.G.Madasamy

4.G.Suresh

5.G.Mahendran

Respondents

PRAYER:- This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree, dated 28.06.2022 passed in MCOP.No.6 of 2021 on the file of the Motor Accidents Claims Tribunal / II Additional District Judge, Thoothukudi.



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For Appellant : Mr. J. Robert Chandrakumar

For 2nd Respondent : Ms. P. Malini

JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation challenging the Judgment and Decree, dated 28.06.2022 passed in MCOP.No.6 of 2021 on the file of the Motor Accidents Claims Tribunal / II Additional District Judge, Thoothukudi.

2. The brief summary of the facts leading to the appeal are that on 01.11.2019 when the first appellant's son Selvakumar was riding his two wheeler on the left side of Kovilpatti to Ettayapuram main road, the vehicle belonging to the first respondent insured with the second respondent came from East to West with high speed and dashed against the two wheeler of the said Selvakumar, causing grievous injuries to him, which ultimately resulted in his death. According to the appellant, the deceased was aged about 25 years at the time of accident and was earning a sum of Rs.30,000/- per month as a two wheeler Mechanic. Therefore, the appellant along with the other children filed a claim petition claiming a



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sum of Rs.90,00,000/- as compensation.

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3. The respondents 1 and 2 contested the claim petition by filing counter, wherein all the averments made in the claim petition were denied. The first respondent contended that it was only the negligence of the deceased that resulted in the accident and that the claimants were put to strict proof of the fact that the deceased was earning a sum of Rs.30,000/- per month. On these and other grounds the first respondent prayed for dismissal of the claim petition.

4. The second respondent in its counter contended that the deceased two wheeler rider did not possess a valid driving license and it was his negligence that caused the accident and therefore, he was not entitled to compensation. The second respondent further contended that the deceased was not wearing a helmet at the time of accident and hence negligence should be imputed to the deceased. Therefore, the second respondent prayed for dismissal of the claim petition.

5. The Tribunal on the assessment of entire evidence on record returned a finding of negligence on the driver of the first



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respondent. On the issue of liability, the Tribunal held that as there was a valid policy, the second respondent was liable to pay the compensation. The Tribunal on a conspectus of the evidence on record awarded compensation of Rs.5,21,000/-. The Tribunal further held that the first claimant being the mother of the deceased was alone entitled to compensation for the other heirs were not dependent on the deceased. The appellant / claimant aggrieved by the quantum of compensation awarded by the Tribunal has filed this appeal for enhancement of compensation.

6. The counsel for appellant submitted that the accident took place in the year 2019 and the deceased was 25 years at the time of accident and was working as mechanic. According to the counsel the Tribunal erred in assessing the income of the deceased at Rs.9,000/- per month on the sole ground that no evidence was filed in support of the income of the deceased. The learned counsel submitted that it was not disputed that the deceased was a mechanic and the same was also spoken to by the first claimant, who was the mother of the deceased. Considering the age of the deceased and also date of the accident the Tribunal ought to have assessed the income of the deceased at Rs.10,000/- per month. The counsel further submitted that the Tribunal erred in deducting 15% from



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the compensation amount towards absence of driving licence and non wearing of helmet. The learned counsel lastly submitted that the Tribunal failed to award any sum to the respondents 3 to 4, the siblings of the deceased towards loss of consortium. On these grounds the counsel prayed for enhancement of compensation.

7. The learned counsel for the Insurance Company on the other hand submitted that the amount awarded by the Tribunal is just and fair and reasonable. The learned counsel further submitted that in the absence of any evidence on the income of the deceased, the Tribunal was justified in assessing the income at Rs.9,000/- per month. The learned counsel further submitted that the Tribunal considering the fact that the deceased was not wearing helmet at the time of accident and that he did not possess a valid driving licence, rightly deducted 50% from the compensation granted. The counsel therefore stated that there were absolutely no merits in the appeal and the same deserved to be dismissed.

8. I have heard both the learned counsel and perused the materials placed on record.



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9. The short point to be decided in this appeal is whether the appellant is entitled to enhancement of compensation?

10. The Tribunal assessed the income of the deceased at Rs.9,000/- per month noting that no evidence was filed in respect of the income of the deceased. The mother of the deceased who was examined as PW.1 clearly deposed that her son was a mechanic and was earning a sum of Rs.30,000/- per month. Though no salary certificate was filed in support of the income of the deceased, the oral evidence of the PW.1, that her son was working as a mechanic was not refuted.

11. Considering the fact that the deceased was working as a Mechanic, I am of the view that Rs.10,000/- can be fixed as income of the deceased. The Tribunal has deducted 30% towards absence of driving licence of the deceased and 20% towards non wearing of helmet. I am of the view that deduction of 50% is untenable. The Division Bench in the Judgment, dated 07.01.2022 made in CMA(MD).No.870 of 2021, permitted deduction of 10% for non wearing of Helmet. The relevant paragraph Nos. 11 and 12, read as follows:



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“11. Wearing helmet is mandatory. In spite of repeated orders of this Court, as well as the statute it is more breached than honoured. Such voluntary disobedience fall within the doctrine of volenti non-fit injuri. In this case, though the deceased has contributed by his negligence, the real sufferers are the claimants, who are dependants of the deceased.

12. This Court is of the view that for contributory negligence on the part of the deceased 10% of the total amount has to be deducted. Accordingly, the award of the Tribunal is interfered with and out of total award of compensation passed by the Tribunal, 10% is deducted towards contributory negligence. Accordingly, the award of the Tribunal is modified from Rs.21,58,750/- to Rs.19,42,875/-.”

12. The Hon'ble Supreme Court in the Judgment reported in **2018 (1) SCC 750 (Dinesh Kumar J. Alias Dinesh, J. Vs. National Insurance Company Ltd. and others)**, held as follows:

“9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not



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driving rasly and negligently which contributed to the accident. We fail to see as to how, only because he was not having a licence, he would be held to guilty of contributory negligence.

10. The matter might have been different if by reason of his rash and negligent driving, the accident had taken place.”

13. In this case, negligence was found against the driver of the first respondent in the absence of any finding of negligence against the deceased, the deduction of 30% merely on the ground of not possessing driving licence is untenable. The above Judgement of the Hon'ble Supreme Court applies squarely to the facts of the case.

14. The Tribunal has dismissed the claim petition as regards the brothers and sister of the deceased on its finding that they were not dependants of the deceased. The tribunal has not awarded any compensation to the siblings of the deceased. In my view the siblings of the deceased, the respondents 3 to 5 are entitled to compensation for loss of consortium. The respondents 3 to 5 would be entitled to Rs.40,000/- each towards loss of consortium. In the above said Judgment reported in ***2018 (1) SCC 750 (Dinesh Kumar J. Alias Dinesh, J. Vs. National Insurance Company Ltd. and others)***, the Hon'ble Supreme Court discussed in detail about compensation towards loss of consortium. In that



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case the Hon'ble Supreme Court awarded compensation towards loss of consortium to the father and sisters of the deceased.

15. For all the above reasons I am of the view that the award of the Tribunal needs to be modified and it is modified in the following manner. The income is assessed at Rs.10,000/- and the loss of income is calculated as follows:

$$\text{Rs.10,000/-} + \text{Rs. 4,000/-} = \text{Rs.14,000/-} / 2 = \text{Rs.7,000/-}$$

$$\begin{aligned} \text{Rs.7,000/-} \times 12 \times 18 &= \text{Rs.15,12,000/-} \times 10\% = \text{Rs.1,51,200/-} \\ &= \text{Rs.15,12,000/-} (-) \text{Rs.1,51,200/-} \\ &= \text{Rs.13,60,800/-} \end{aligned}$$

16. Further, the respondents 3 to 5 are entitled to a sum of Rs.40,000/- each towards loss of consortium. In all other respects the amount awarded by the Tribunal is confirmed. Therefore, the Award of the Tribunal is modified as follows:



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together with accrued interest on filing necessary application before the Tribunal.

19. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

27.02.2023

Index : Yes/No
Internet : Yes/No
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To

The Motor Accidents Claims Tribunal / II Additional District Judge,
Thoothukudi.



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N. MALA, J.,

trp

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