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C.M.A.No.524 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.524 of 2024

1. Diviya
2. Rithisha (Minor)
3. Booviya (Minor)
4. Devagi
5. Govintharaj
(2nd and 3rd petitioners are minors
represented by their mother and
Natural Guardian B.Diviya)

.. Appellants

Vs.

1. Mr.J.Vedhaprakash

2. The Manager,
The New India Assurance Company
Limited,
Motor Third Party Claims Hub,
Bombay Mutual Building, 6th Floor,
No.223, N.S.C.Bose Road,
Chennai 600 001.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.10.2023 made in M.C.O.P.No.3267 of 2021 by the learned Motor Accident Claims Tribunal (in the II Court of Small Causes, Chennai).

For Appellants : Mr.K.Balaji



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For Respondents : Mr.A.Salomi (R2)

J U D G M E N T

Challenging the fixation of 10% contributory negligence against the deceased and the quantum of compensation awarded by Motor Accident Claims Tribunal, II Court of Small Causes, Chennai vide award dated 19.10.2023 made in M.C.O.P.No.3267 of 2021, the present Civil Miscellaneous Appeal has been filed by the Appellants/Claimants.

2. The Appellants are the Claimants in M.C.O.P.No.3267 of 2021 on the file of *Motor Accidents Claims Tribunal (in the II Court of Small Causes, Chennai)*. They filed the above said claim petition, claiming a sum of **Rs.49,00,000/-** as compensation for the death of one Boologam, who died in an accident that took place on 12.07.2021.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver van bearing Registration No.TN-23-C-5558, belonging to the 1st Respondent and directed the 2nd Respondent-Insurance Company to pay a



sum of **Rs.22,68,900/-** as compensation to the Appellants.

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4. Not being satisfied with the amount awarded by the Tribunal and being aggrieved with the fixation of contributory negligence of 10% on the deceased, the Appellants have come out with the present appeal seeking enhancement of compensation.

5. The learned counsel for the Appellants submitted that the Tribunal fixed 10% contributory negligence on the deceased on the ground that the deceased had not worn the helmet while driving the two wheeler. He further submitted that non wearing of helmet by the deceased does not imply that the deceased had also contributed for the accident. He further submitted that at the time of accident, the deceased was 38 years old and was working as a Ambulance driver and earning a sum of Rs.14,000/- per month, but the Tribunal without considering the same has fixed the monthly income of the deceased at Rs.12,000/- which is very low. He further submitted that the overall compensation awarded by the Tribunal is very low and therefore seeks for enhancement.

6. Per contra, the learned counsel appearing for the 2nd respondent- Insurance Company contended that at the time of accident, the deceased had



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not worn the helmet while riding his two wheeler, which resulted in grievous injuries on his head and hence the Tribunal on considering the said aspect has rightly fixed 10% contributory negligence on the deceased. He further submitted that since the Appellants have not filed any documentary evidence in order to prove that the deceased was and earning a sum of Rs.14,000/- per month, the Tribunal, by taking note of the judgment of Hon'ble Apex Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in **(2014 (1) TNMAC 459)**, has fixed the notional monthly income of the deceased at Rs.12,000/- and the same is reasonable. He further submitted that the total compensation awarded by the Tribunal under various heads is not meager and the appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the Appellants as well as the learned counsel appearing for the 2nd Respondent-Insurance Company and perused the entire materials on record.

8. A perusal of the Award passed by the Tribunal would go to show that though the Tribunal by considering the evidence of P.W.1- 1st Claimant and P.W.2- Mr.Appa Durai who is an eye witness to the accident has come to the conclusion that the accident occurred due to rash and negligent



driving by the driver of the Van bearing Registration No.TN-23-C5558 fixed 10% contributory negligence on the part of the deceased on the ground that if the deceased had worn the helmet, he would not have sustained injuries on his head, which in the opinion of this Court is not correct. It is no doubt true that non wearing of helmet at the time of riding two wheeler is in violation of Motor Vehicles Act, 1988, for which penalty can be imposed, but not wearing of helmet cannot be construed to be negligence, which has contributed to the accident. Hence, this Court is inclined to set aside 10% of the contributory negligence fixed against the deceased and accordingly set aside the same.

9. As far as the quantum of compensation awarded by the Tribunal is concerned, since no documents were produced by the Appellants to prove the monthly income of the deceased, the Tribunal by taking note of the Judgment of Hon'ble Apex Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TNMAC 459***, fixed the monthly income of the deceased at Rs.12,000/-, per month, which in the opinion of this Court, is very low. In the case on hand, the accident occurred in the year 2021. The cost of living has been increased enormously and salary of even unskilled workers being increased substantially and therefore this



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Court is of the view that a sum of Rs.14,000/- can be fixed as monthly income of the deceased and accordingly a sum of Rs.14,000/- is fixed as monthly income of the deceased. and by adding 40% towards future prospects, a sum of Rs.19,600/-(14000+5600) is arrived and by deducting 1/4th towards personal expenses and adopting multiplier '15' as per Judgment of the Hon'ble Supreme Court in the case of **SARLA VERMA AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER** reported in (2009) 4 MLJ 997, a sum of Rs.26,46,000/- (19600x15x12x3/4) is awarded towards **Loss of Dependency** and hence the compensation towards Loss of Dependency is enhanced from Rs.22,68,000/- to Rs.26,46,000/-. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	22,68,000/-	26,46,000/-	Enhanced
2.	Loss of Consortium	2,20,000/-	2,20,000/-	Confirmed
3.	Loss of Estate	16,500/-	16,500/-	Confirmed
4.	Funeral Expenses	16,500/-	16,500/-	Confirmed



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
	Total Less:10% Contributory negligence	Rs.25,21,000/- Rs.2,52,100/- Rs.22,68,900	Rs.28,99,000/- Nil Rs.28,99,000	Enhanced by Rs.6,30,100 /-

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.22,68,900/- is hereby enhanced to Rs.28,99,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The claimants are entitled to the compensation as per the apportionment made by the Tribunal. The 2nd Respondent-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 period of *six weeks* from the date of receipt of a copy of this judgment to the credit of **M.C.O.P.No.3267 of 2021** on the file of the Motor Accidents Claims Tribunal (in the II Court of Small Causes, Chennai). On such deposit being made, the Tribunal is directed to transfer the award amount of the Appellants 1, 4 and 5, directly to their Bank accounts through RTGS, within a period of *three weeks*. The shares of the minor claimants /Respondents 2 and 3 are directed to be



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deposited in any of the nationalized banks in a cumulative interest bearing fixed deposit, till they attain majority and after attaining the majority the claimants 2 and 3 shall withdraw the same, in accordance with law. The Appellants/Claimants shall pay necessary Court fee, if any, on the enhanced compensation. However, it is made clear that if there is any delay in filing the C.M.A. and in case of any earlier order by this Court, depriving interest for the period of delay in question, the interest portion for that period should be excluded for the purpose of granting interest. No costs.

26.03.2024

arr

Index : Yes / No

Internet : Yes / No

To

1. The Manager,
The New India Assurance Company
Limited,
Motor Third Party Claims Hub,
Bombay Mutual Building, 6th Floor,
No.223, N.S.C.Bose Road,



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Chennai 600 001

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

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

KRISHNAN RAMASAMY, J.

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