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C.M.A.No.1741 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2024

CORAM:

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

C.M.A.No.1741 of 2021

1. C.Vaijayanthimala

...Appellant

Vs.

1. R.Vijaya

(Appeal is dismissed as not pressed against R-1, vide court order dated 18.06.2024 made in C.M.A.No.1741 of 2021)

2. M/s.United India Insurance Co.Ltd.,
Represented by its Divisional Office – II (HUB),
104-A, Peramanoor Main Road,
Salem District.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order of contributory negligence fixed upon the appellant and to set aside the order of dismissal for the 2nd appellant and for enhancement and for enhancement of the compensation amount awarded in the Judgment and Decree dated 01.02.2021 made in M.C.O.P.No.1643 of 2016 on the file of the Special District Court / MCOP Tribunal, Salem.



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For Appellants : Mr.M.Guruprasad

For Respondents : Dismissed as not pressed vide order dated
18.06.2024 [R1]
Mr.S.Arun Kumar for R2

JUDGEMENT

Challenging the judgment and decree dated 01.02.2021 made in MCOP.No. 1643 of 2016 on the file of the Special District Court / MCOP Tribunal, Salem, the claimants are before this Court.

2. Mr.S.Arun Kumar accepts notice for the second respondent.

3. It is the case of the appellants/claimants that, the appellants are parents of the deceased. On 19.05.2016 at about 8.40 a.m, when the deceased was riding a two wheeler bearing Regn.No.TN 75 E 1244 along with one Elaiyabharathi as a pillion rider, the offending vehicle bearing Regn.No.TN 33 E 2266 belonging to the first respondent which came in the opposite direction driven by its driver came in a rash and negligent manner hit the two wheeler driven by the deceased, due to which, the deceased died on spot and



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the pillion rider sustained grievous injuries all over the body. Thereafter, the appellants have filed a claim petition seeking compensation of Rs.35,00,000/-.

4. Before the tribunal, the claimants examined P.W.1 to P.W.3 and marked exhibits P.1 to P.13 and the respondents examined R.W.1 and no documents have been marked on their behalf. Exs.C1 and C2 were marked as Court documents. After trial, the Tribunal, on appreciation of oral and documentary evidence, awarded a compensation of Rs.12,39,600/- after deducting 20% contributory negligence on the part of the deceased to the first appellant. Being not satisfied with the quantum of compensation awarded by the Tribunal and the negligence fixed on the part of the deceased, the claimants / parents of the deceased have come up with this appeal.

5. Learned counsel appearing for the appellant submitted that admittedly, the offending vehicle in a rash and negligent manner dashed the deceased, thereby the deceased died on spot and the pillion rider sustained grievous injuries all over her body. On the basis of the Ex.C1, copy of FIR,



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rough sketch and observation mahazar and Ex.C2, Motor Vehicle Inspector's report, the Tribunal has passed the award by fastening 20% contributory negligence on the part of the deceased for not wearing helmet. When there is no proof for non-wearing of helmet, the Tribunal based on the presumption, had fixed 20% contributory negligence as against the deceased which is *per se* unsustainable. As per Ex.P.11, Pay slip, it is seen that the deceased underwent training at M/s.Royal Enfield Eicher Motors Limited, and had earned a sum of Rs.12,000/- per month as stipend, which was also corroborated by P.W.3, through his deposition, however, without considering the same, the Tribunal has fixed only a sum of Rs.10,000/- as notional income which is very meagre. The other heads awarded by the Tribunal are also on the lower side and the same requires to be interfered with.

6. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company submitted that, admittedly, the deceased / rider of the two wheeler has to necessarily wear helmet as per the provisions of the Motor Vehicle Rules and by considering all the relevant documents, the Tribunal has



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rightly awarded the compensation after deducting 20% contributory negligence on the part of the deceased for non-wearing of helmet, which does not require any enhancement. More so, it is evident from Ex.P.2 Postmortem certificate that the deceased died due to the injuries sustained on head, which is one of the substantial evidence to prove that the deceased was not wearing helmet at the time of the accident. As per Ex.C1, rough sketch, it is seen that the deceased had driven his two wheeler in a rash and negligent manner dashed the bus which came in the opposite direction. Upon appreciating the said documents, the Tribunal has rightly deducted 20% contributory negligence on the part of the deceased, which does not warrant any interference. Accordingly, he prayed for dismissal of the appeal.

7. Heard the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The major grievance of the Appellants/claimants is with regard to the quantum of compensation



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awarded by the Tribunal and the 20% negligence fixed as against the deceased.

9. The issue involved in the present case is that whether the deceased was wearing the helmet at the time of accident or not ?

10. It is the contention of the appellant that on the basis of Ex.C1 and C2, the Tribunal has fastened 20% contributory negligence for non-wearing of helmet. It is discernible from Ex.P.2, Postmortem certificate, that the deceased sustained injuries all over his body, however, without considering the same, the Tribunal had erroneously held that the deceased died due to the injuries sustained in head. Similarly Ex.C.1 is only a rough sketch and Ex.C2, Motor Vehicle Inspector's Report which is not a substantial proof of evidence to hold that the deceased was not wearing the helmet. In the event of there being no evidence, the Tribunal shall not presume that the deceased was not wearing the helmet at the time of accident and deducting 20% contributory negligence on the part of the deceased on the basis of such presumption is wholly untenable.



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When that be so, this Court thinks it appropriate to fix entire negligence on the part of the driver of the first respondent's vehicle and hence, the second respondent being the insurer of the offending vehicle is liable to indemnify the claimants for the loss sustained by them due to the death of the deceased.

11. The another important aspect is with regard to the notional income fixed by the Tribunal. On a perusal of Ex.P.11, Pay slips of the deceased and the deposition of P.W.3, clearly reveals that the deceased underwent training at M/s.Royal Enfield Eicher Motors Limited and had earned a sum of Rs.12,000/- per month as stipend, however, without considering the same, the Tribunal has fixed only a sum of Rs.10,000/- per month as notional income which is very meagre. Hence, this Court is inclined to fix a sum of Rs.12,000/- as notional income and at the time of accident, the deceased was aged about 21 years, after adding 40% towards future prospects, the same would arrive at Rs.16,800/- (Rs.12,000 + Rs.4,800). Since the deceased died as a bachelor, 50% has to be deducted towards personal expenses. After deducting 50% towards personal expenses, the monthly income of the deceased would be at



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Rs.8,400/- (Rs.16,800 – 50% of Rs.16,800) and as per the Judgment of the Hon'ble Apex Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 (SC), the right multiplier to be adopted is '18' and hence, the loss of dependency would be at Rs.18,14,400/- (Rs. 8,400 x 12 x 18).

12. No award has been granted under the head love and affection. Hence, this Court is inclined to award a sum of Rs.40,000/- to each of the claimants under the said head. Insofar the compensation awarded under other heads are concerned, the same does not require any interference.

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

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of dependency	12,09,600/-	18,14,400/- (enhanced)
Loss of love and affection	-	80,000/- (awarded)



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Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of estate	15,000/-	15,000/-
Funeral expenses	15,000/-	15,000/-
Total	12,39,600/-	19,24,400

14. Accordingly, the appeal is partly allowed and the impugned award of the Tribunal is modified enhancing the compensation amount to **Rs.19,24,400/-**. Insofar as the first respondent is concerned, this appeal is dismissed as not pressed vide order of this Court dated 18.06.2024 made in C.M.A.No.1741 of 2021. It is erroneous that the Tribunal had held that the first appellant / mother of the deceased alone is entitled for the compensation awarded by the Tribunal, undoubtedly, the second appellant being the father of the deceased, is also entitled for the compensation. Hence, the compensation fixed by this Court shall be equally apportioned among the appellants. The 2nd respondent/Insurance Company is directed to deposit the said amount to the credit of MCOP.No.1643 of 2016 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



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period of four (4) weeks from the date of receipt of a copy of this judgment.

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On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellants through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellants. There shall be no order as to costs in the present appeal.

27.11.2024

rap

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes / No

To

1. The Motor Accident Claims Tribunal /
Chief Judicial Magistrate, Namakkal.
2. The Section Officer,
V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

RAP

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