



C.M.A. No. 2276 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2276 of 2021

1. Ashok Kumar
 2. Sivakumar
- ... Appellants / Petitioners

Vs.

1. Kumarasamy
 2. M/s.Reliance General Insurance Co. Ltd.,
Ami Middown, 43 B, Sri Abirami Tower,
Cowil Brown Road,
R.S.Puram,
Coimbatore- 641 002
- ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 30.01.2020 passed in M.C.O.P. No.495 of 2017 on the file of the Motor Accident Claims Tribunal (V Additional District Court), Coimbatore, in so far as against the disallowed portion of the claim, by enhancing the compensation payable to the appellants.

For Appellants	: Mr.S.T.Bharath Gowtham
For R1	: M/s.J.Jayan
For R2	: M/s.C.Bhuvanasundarai



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JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimants challenging the deduction of 1/3rd made by the Tribunal as the compensation quantified is awarded in M.C.O.P. No.495 of 2017, dated 30.01.2020 on the file of the Motor Accident Claims Tribunal, V Additional District Court, Coimbatore.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The claimants herein are the sons of the deceased. While the deceased was travelling with her husband as a pillion rider in a two-wheeler bearing Registration No.TN 38 BZ 2452 on 23.08.2016 at about 7.15 a.m., near Thamarai kuram Mariappan Wigh Bridge on Coimbatore to Pollachi National Highways, the two wheeler met with an accident and she has sustained grievous injuries on her head and face and succumbed to the injuries. A criminal case was also registered against the rider of the two-wheeler i.e., husband of the deceased in Crime No.332 of 2016 by the Kinathikadavu Police Station.



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4. The Tribunal based on the evidences placed on record has held that the first respondent who is the husband of the deceased and since he is also entitled for $1/3^{\text{rd}}$ of compensation as one of the legal heirs of the deceased, the Tribunal has chosen to deduct $1/3^{\text{rd}}$ of compensation amount quantified and granted only $2/3^{\text{rd}}$ to the claimants herein.

5. It is true that the first respondent who is the husband of the deceased himself is a tortfeasor and he is not entitled to claim compensation however that is not a ground to deduct his share from the compensation quantified by the Tribunal. Since the claimants themselves are the dependents and they are entitled to get entire compensation even in the absence of husband of the deceased.

6. The learned counsel or the Insurance Company has submitted that the deceased had died since she was not wearing a head gear to cover herself from the injuries. If she had a head gear, she could not have died in this case. The learned counsel further submitted that the income claimed by the claimants is Rs.10,000/- per month whereas, the Tribunal has fixed the notional income of the deceased as Rs.12,800/- by following the Division



Bench Judgment of this Court in *Andal and others vs. The New India*

Insurance Company Limited [2019 (1)TN MAC 54 DB] for fixing the notional income based on daily wages the table for fixing the wage based on inflation index, as on the date of the accident, i.e., 2016, the income for the year 2015-2016 [Rs.6500/- x 254 / 129 = Rs.12,798/-. @ Rs.12,800/- per month.

7. The Tribunal while awarding compensation has to award “just compensation” and even if the claimants are made lesser claim if they are entitled for larger amount than the claim amount if the quantum quantified falls within the definition of “Just Compensation” (Refer Judgment *Laxman vs. Divisional Manager, Oritl Insurance Company Ltd., and Others [MANU/SC/1423/2011* and *Nagappa vs. Gurudayal Singh and Others [2003 (2) SCC 274]* and *Sidram vs. The Divisional Manager, United India Insurance Company Ltd., and Others [2023 (3) SCC 439]*). In this case by adopting Division Bench Judgment of this Court, the Tribunal fixed the notional income of the house wife, she is aged about 47 years and having two children and she was a homemaker. Under the said circumstances, the notional income fixed by the Tribunal is proper and the same is hereby confirmed. The objection with regard to fixing the notional income for the deceased raised by the Insurance Company is hereby rejected.



8. However as stated by the learned counsel for the Insurance Company that on scrutiny of the Medical Report and Post-mortem Certificate and other connected records which shows that including the Post-mortem Certificate - Ex.P8 and the injuries mentioned in the claim petition shows that the deceased was suffered head injury and also on her face which resulted in causing instantaneous death of the deceased. Under the said circumstances, as held by this Court in ***The Branch Manager, Oriental Insurance Company Ltd., vs. Indirani and 5 others [C.M.A(MD).Nos.987 & 988 of 2014, dated 13.02.2017]*** and ***R.Mallika and 2 others vs. A. Babu and 4 others [C.M.A.No.3235 of 2014, dated 08.06.2015]***. 20% of income has to be deducted for non wearing of helmet, on the ground of contributory negligence.

9. The Tribunal has rightly followed the dictum as laid down in ***National Insurance Co. Ltd., vs. Pranay Sethi and other*** reported in ***[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]*** and fixed 25% as future prospectus and as per the Apex Court Judgment in ***Sarla Verma and others Vs. Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]***, the multiplier is fixed as '13' by considering the age of the deceased at the time of the accident. Since the husband eventhough is not



entitled to claim compensation in this case, admittedly he is to be treated as legal heir and dependants. I agree that tortfeasor is not entitled for compensation, but the dependants and legal heirship of husband could not be denied for calculating the compensation. The wife's income is always been shared with her husband, and the deduction for her personal and living expenses has to be calculated by including the dependency of her husband. Hence, deduction made herein for the personal and living expenses to be extend of 1/3rd is valid. However, no spouses consortium could be awarded in this case. Accordingly the loss of income calculated as follows: Loss of income : $[12800 + 3200 (25\% \text{ of } 12800) = 16000$ and after deducting 1/3rd as personal and living expenses $(16000 - 5333) = 10667 \times 12 \times 13 = \text{Rs.}16,64,052/-$. The Tribunal has awarded a sum of Rs.1,20,000/- for the head loss of consortium including husband is not valid. Compensation of Rs.80,000/- is award for loss of consortium. As far as the other conventional heads such as funeral expenses and loss of estate are concerned, the same are reasonable and the same are hereby confirmed. The compensation quantified shall be shared between the claimants equally.

10. Accordingly, the Award passed by the Tribunal under various heads are hereby modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	Rs.16,64,000/-	Rs.16,64,052/-	Enhanced
2.	Loss of estate	Rs.15,000/-	Rs.15,000/-	Confirmed
3.	Funeral expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Loss of consortium	Rs.1,20,000/-	Rs.80,000/-	Reduced
	Compensation quantified	Rs.18,14,000/-	Rs.17,74,052/-	
	(Less) 1/3rd towards share of the 1st respondent	Rs.6,04,666/-		
	(Less) 20% contributory negligence		Rs.3,54,810/-	
	Total compensation quantified	Rs.12,09,334/-	Rs.14,19,242/-	Enhanced by Rs.2,09,908/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,09,334/- is hereby enhanced to Rs.14,19,242/- [Rupees Fourteen Lakhs Nineteen Thousand Two Hundred and Forty Two only] along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a



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period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.495 of 2017 on the file of the Motor Accidents Claims Tribunal, V Additional District Court, Coimbatore. On such deposit, the appellants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. There shall be no order as to costs in the present appeal.

03.01.2024

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The V Additional District Judge,
Motor Accident Claims Tribunal,
Coimbatore.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



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K. RAJASEKAR, J.

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