IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1353 of 2024

1. Tamizharasi
2. Subramani ... Appellants

vs.

1. Anand

2. The Manager
United India Insurance Company Limited,
T.B. Hub Divisional Office,
No.4, Promenade Road, 1st Floor
Trichy 620 001. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against Award dated 30.01.2024 passed in M.C.O.P.179/2021 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

For Appellants	: Mr. M. Lokesh
R1	: Notice dispensed with.
For R2	: Mrs. R. Rathna Thara

JUDGMENT

The appellants are the claimants in M.C.O.P.179/2021 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.50,00,000/- for the death of their son in a road accident that took place on 27.04.2021.

2. The brief case of the appellants / claimants is as follows :

2.1. On 27.04.2021 Rajkumar (deceased) was riding his TVS Sport two wheeler bearing Registration Number TN-46-W-3128 on Kunnam-Othiyam Road. When he was nearing Kunnam Taluk Office, at about 11.15 p.m, a Wagon R car bearing Registration Number TN-01-U-9631, belonging to the first respondent, came in the opposite direction and hit the two wheeler, as a result of which he sustained injuries all over his body. He was immediately rushed to Government Hospital, Perambalur. However, he succumbed to injuries on 28.04.2021.

3. According to the claimants, the rash and negligent driving of the driver of the Wagon R car bearing Registration Number TN-01-U-9631, was the cause of the accident and that since the said vehicle was insured with the second respondent, the United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the first respondent remained absent and was set *ex parte*. The second respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the offending vehicle bearing Registration Number TN-01-U-9631 and that of the deceased in the ratio 50:50 and directed the second respondent to pay a compensation of 12,42,548/- (50% of the total compensation of Rs.24,85,096/-) to the appellants/claimants together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation. The Tribunal also

held that the liability of the respondents are joint and several.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mr. M. Lokesh, learned counsel appearing for the appellants and Mrs. R. Rathna Thara, learned counsel for the second respondent.

8. Mr. M. Lokesh, learned counsel appearing for the appellants contended that though FIR was registered against the driver of the Wagon R car bearing Registration Number TN-01-U-9631, the Tribunal had wrongly fastened 50% contributory negligence on the part of the deceased. He also contended that the Tribunal had not awarded just compensation to the claimants. He therefore prayed for setting aside 50% contributory negligence fastened on the part of the deceased and to enhance the compensation.

9. Per contra, Mrs. R. Rathna Thara, learned counsel appearing for the second respondent/Insurance Company contended that the Award passed by the Tribunal is based on the well laid down principles of law which were in vogue at the time of passing of the order. She also contended that the accident took place since the victim while overtaking a lorry crossed the lane and hit Wagon R car. According to her, the victim also did not have a valid driving license and in the circumstances, deducting 50% towards contributory negligence on the part of the victim by the Tribunal is perfectly in order.

10. A perusal of the FIR (Ex.P1) shows that the rider of the two wheeler was overtaking a lorry and at that time, a Wagon R car bearing Registration Number TN-01-U-9631, came in the opposite direction and hit the two wheeler. In the circumstances, the Tribunal fixed negligence on the part of the deceased and the driver of the Wagon R car bearing Registration Number TN-01-U-9631 in the ratio 50:50. It is pertinent to point out that the Wagon R car is a four wheeler and the driver of the four wheeler should have been more careful while driving his vehicle. At the same time the rider of the two wheeler should have been careful while

overtaking another vehicle. In the circumstances, fixing negligence on the part of the driver of the Wagon R car bearing Registration Number TN-01-U-9631 and the deceased in the ratio 90:10 would meet the ends of justice.

10.1. The deceased was aged 25 years at the time of accident and was working as a two wheeler mechanic earning a sum of Rs.30,000/- per month. Since the claimants did not adduce sufficient documentary evidence to substantiate the same, the Tribunal had fixed the notional monthly income of the deceased as Rs.15,973/- based on the cost inflation index for the year 2021-2022. The accident took place in the year 2021 and the deceased was aged 25 years on the date of accident. In the circumstances, this Court is of the view that fixing the notional income at Rs.16,000/- per month would meet the ends of justice. As per the decision of the Supreme Court of India in ***National Insurance Co. vs Pranay sethi and others*** reported in ***2017 (2) TNMAC 601,*** 40% is added towards future prospects of the deceased. Since the deceased died as a bachelor, 1/2 should be deducted towards his personal expenses. The deceased was aged 25 years on the date of the accident and the proper multiplier to be adopted in the instant case is 18 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121.***

Calculation

Notional Income = Rs.16,000/-

40% Future Prospects = Rs.22,400/-

After 1/2 deduction = Rs.11,200/-

Loss of dependency

= Rs.11,200/- x 12 x 18

= Rs.24,19,200/-

In addition to that the claimants are entitled to Rs.80,000/- (40,000 x 2), Rs.15,000/- and Rs.15,000/- for Loss of Consortium, Loss of Estate and Funeral Expenses respectively as per the decision in ***National Insurance Co. vs Pranay sethi and others*** (cited supra).

10.2 The enhanced amount under the different heads are detailed hereunder:

S.No.	***Head***	***Amount granted by this court (Rs.)***
1.	Loss of dependency	24,19,200/-
2.	Loss of consortium (Rs.40,000/- x 2)	80,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	25,29,200/-
	Less 10% contributory negligence	2,52,920/-
	Compensation amount	**22,76,280/-**

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11. In the result,

i. The Civil Miscellaneous Appeal is partly allowed. No costs.

i. The orders passed by the Tribunal fixing contributory negligence on the part of the deceased to an extent of 50% is reduced to 10%.

ii. The compensation awarded by the Tribunal is enhanced from Rs.12,42,548/- to Rs.22,76,280/-.

iii. The appellants / claimants are directed to pay court fee for the enhanced compensation amount, if any, within a period of four weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

iv. The second respondent, the United India Insurance Company Limited, Trichy, is directed to deposit the enhanced compensation amount i.e., Rs.22,76,280/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.179 of 2021 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur, within a period of four weeks from the date of receipt of a copy of this order. The ratio of apportionment made by the Tribunal shall be kept intact.

v. On such deposit being made, the appellants/claimants are at liberty to withdraw their share as per the apportionment made by the Tribunal after filing a proper petition for withdrawal.

03.09.2024

Index : Yes/No
Speaking/Non-speaking order
bga

To

1. Motor Accident Claims Tribunal, Principal District Court, Perambalur

2. The Manager
   United India Insurance Company Limited
   T.B. Hub Divisional Office,
   No.4, Promenade Road, 1st Floor
   Trichy 620 001.

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

R.HEMALATHA, J.

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