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C.M.A.No.1492 of 2021

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 16.04.2024

CORAM

THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

C.M.A.No.1492 of 2021

M/s.National Insurance Co. Ltd.,
Bank of India Upstairs,
2nd floor, Trichy Perambalur Main Road,
Perambalur.

.. Appellant

Vs

1.Sagayamari
2.Angammal
3.Thangam
4.Prabhukumar

.. Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 02.07.2020, made in M.C.O.P.No.120 of 2019, on the file of the Motor Accident Claims Tribunal, Sessions Judge, Perambalur.

For Appellant

: Mr.S.Arunkumar

For R1 to R3

: Mr.T.Gopinath

For R4

: No Appearance



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JUDGMENT

The appeal has been filed by the Insurance Company challenging the award on the following grounds:-

(a) No contributory negligence has been fixed by the Tribunal on the deceased who was the rider of a two-wheeler.

(b) The quantum of compensation awarded by the Tribunal is excessive.

2. Insofar as the first ground raised by the Insurance Company is concerned, the Tribunal has rightly held that the deceased was not responsible for the cause of the accident by giving the following reasons:-

(a) An FIR was registered only against the driver of the lorry insured with the appellant.

(b) PW2-eyewitness has also deposed that the driver of the lorry insured with the appellant was alone responsible for the cause of the accident.

3. Apart from the aforesaid reasons, this Court also notices that no contra evidence has been produced by the Insurance Company to



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disprove the contention of the claimants with regard to the cause of the accident . As seen from the sketch (Ex.R1), the width of the road is not disclosed, though the learned counsel for the appellant contends that the accident happened in the middle of the road. Only based on preponderance of probability, the compensation claim is adjudicated by the Tribunal. The Tribunal, based on the evidence available on record, has rightly held that the driver of the lorry insured with the appellant is alone responsible for the cause of the accident. This Court does not find any infirmity in the said finding given by the Tribunal.

4. Insofar as the compensation awarded by the Tribunal is concerned, the appellant Insurance Company is aggrieved by the assessment of the monthly income of the deceased by the Tribunal at Rs.15,000/-, which, according to them, is excessive. The claimants have pleaded that the deceased was a marketing executive in a private concern and was earning a sum of Rs.20,000/- per month at the time of the accident. The claimants have also filed Post Graduate Certificates of the deceased, which has been marked as Exs.P10 and P11. However, the claimants have not filed any salary certificate of the deceased and they have also not examined the employer of the deceased. The Tribunal on



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notional basis, has fixed the monthly income of the deceased at Rs.15,000/-. The accident happened in the year 2018. Since the claimants have not produced the salary certificate of the deceased and they have also not examined the employer of the deceased, the Tribunal ought not to have fixed the notional monthly income of the deceased at Rs.15,000/-. Therefore, after giving due consideration to the year of the accident, i.e., 2018, this Court reduces the notional monthly income of the deceased to Rs.14,000/- instead of Rs.15,000/- fixed by the Tribunal.

5. Insofar as award of compensation under the various other heads, such as, loss of estate, funeral expenses and medical expenses, are concerned, the same is just and reasonable compensation. The medical expenses incurred by the deceased are also supported by the medical bills, which have been marked as exhibits before the Tribunal. The Tribunal has rightly applied multiplier '18' after giving due consideration to the age of the deceased, who was 24 years old at the time of the accident. Being a bachelor, the Tribunal has rightly deducted 50% towards personal expenses of the deceased. However, the Tribunal has failed to award compensation towards loss of love and affection, which the claimants are legally entitled as per the decision of the Hon'ble



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Supreme Court in *National Insurance Co. Ltd., Vs. Pranay Sethi and*

others [2017 (16) SCC 680]. The mother, being a dependent of the deceased, ought to have been awarded with a compensation of Rs.40,000/- towards loss of love and affection, which the Tribunal has erroneously failed to award.

6. For the foregoing reasons, the award passed by the Tribunal is re-worked in the following manner:-

Monthly income	-- Rs.14,000/-
40% of future prospects	-- Rs.5,600/-
Total	-- Rs.19,600/-
(-) 50% towards personal expenses	-- Rs.9,800/-

Loss of earning capacity	
= 9800 x 12 x 18	-- Rs.21,16,800/-
Loss of estate	-- Rs.15,000/-
Funeral expenses	-- Rs.15,000/-
Medical expenses	-- Rs.2,83,000/-
Loss of love and affection	-- Rs.40,000/-
Total compensation	-- Rs.24,69,800/-

7. In the result, the Civil Miscellaneous Appeal is disposed of and the impugned award passed by the Tribunal in M.C.O.P.No.120 of 2019, dated 02.07.2020 is modified by directing the appellant Insurance



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Company to pay a compensation of Rs.24,69,800/- together with interest at 7.5% per annum from the date of claim petition till the date of realization. It is represented by the learned counsel for the appellant that the entire award amount has already been deposited to the credit of M.C.O.P.No.120 of 2019, on the file of Motor Accidents Claims Tribunal, Sessions Judge, Perambalur. Since the award amount is reduced by this Court, the appellant Insurance Company is permitted to withdraw the excess amount paid by them under the impugned award passed by the Tribunal by filling an appropriate application. The Tribunal is directed to transfer the entire award amount as ordered in this judgment along with accrued interest therein through RTGS/NEFT transfer to the bank account of the claimants. No Costs. C.M.P.No.7772 of 2021 is closed.

16.04.2024

Index: yes/no
Neutral citation: yes/no
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To



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1. Sessions Judge,
(Motor Accident Claims Tribunal)
Perambalur.

ABDUL QUDDHOSE,J.

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