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C.M.A.No.2865 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE K. RAJASEKAR

C.M.A.No.2865 of 2021

1. Kalaiselvi
2. Indhumathi
3. Minor. Ranjani
4. Seerangammal
5. Nadesan

... Appellants

Vs.

1. Ravi
2. United India Insurance Company Limited
Rep.by its Divisional Office-II (HUB)
No.104-A, Peramanoor Main Road,
Salem - 7.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.03.2020 made in M.C.O.P.No.435 of 2020 on the file of Motor Accident Claims Tribunal Special District Judge, Salem.



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For Appellants : Mr.S.P.Yuaraj

For Respondents : Mrs.I.Malar for R2

R1 - Dispensed with

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging 25% of contributory negligence fixed on the part of the deceased as well as for enhancement of compensation granted by the award dated 16.04.2021 made in M.C.O.P.No.435 of 2020 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

2. According to appellants/claimants, on 18.12.2019 at about 9:00 p.m. the deceased Samivel was travelling as a pillion rider in a two wheeler bearing Registration No. TN 34 X 6867 on Komarapalayam - Veppadai road. While he reached near Muniyappan Kovil it is said the offending vehicle bearing Registration No.TN 36 AR 5949 which was coming from the opposite direction driven by its driver in a rash and negligent manner hit against the two wheeler resulted in the death of the deceased. The accident occurred due to the rash and negligent driving of the driver of the bus bearing Registration



No. TN 36 AR 5949. The Pallipalayam Police had registered a case in Cr.No.725 of 2019 against the driver of the bus. The deceased Samivel was aged 40 years at the time of accident and he was working as a load man and was earning a sum of Rs.30,000/- per month. The petitioners are the wife, children and parents of the deceased and they were depending only upon the deceased Samuvel. Therefore, the claimants have come forward with the petition seeking for a sum of Rs.50,00,000/- by invoking Section 166 of Motor Vehicles Act.

3. The 1st respondent owner of the bus has not contested the claim and remained exparte.

4. The learned counsel appearing for the 2nd respondent/Insurance Company submitted that the accident is a head on collision of a two wheeler bearing Registration No.TN 34 X 6867 and a bus bearing Registration No.TN 36 AR 5949 insured with this 2nd respondent. The rider of the two wheeler had sustained only a simple injury, but the pillion rider (deceased) had a head injury and jumped out of the two wheeler on seeing the bus coming on the



opposite direction. The deceased had fallen down from the two wheeler as he had travelled without required precaution. Both the rider of the two wheeler and the pillion rider (deceased) was not wearing the helmet. The owner and insurer of the two wheeler are necessary parties for the final adjudication of the claim. The appellants have to prove that they are the legal heirs of the deceased and also the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the claimants is highly excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, on behalf of the appellants, the first appellant examined herself as P.W.1 and one Ramesh, was examined as P.W.2 and 23 documents were marked as Exs.P1 to P23. The respondents did not let in any oral and documentary evidence.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent riding by the rider of the bus belonging to the 1st respondent and fixed 25%



negligence on the part of the deceased for not wearing helmet at the time of accident and 75% negligence on the part of the driver of the bus belonging to the 1st respondent and directed the 1st and 2nd respondent jointly and severally to pay a sum of Rs.10,15,000/- towards 75% of the total compensation to the appellant.

7. Challenging the portion of the award fixing 25% contributory negligence on the part of the deceased and not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

8. The learned counsel appearing for the appellants contended that though the Tribunal has held that the accident has occurred only due to the rash and negligent riding by the driver of the bus belonging to the 1st respondent, the Tribunal erred in fixing 25% contributory negligence on the part of the deceased. The Tribunal ought to have fixed entire negligence on the part of the 1st respondent. The deceased was aged 40 years and was a load man and was earning a sum of Rs.30,000/- per month. The Tribunal fixed a



meagre sum of Rs.9,000/- per month as notional income of the deceased has not awarded any amount towards loss of love and affection. The total compensation awarded by the Tribunal under different heads are meagre and prayed for setting aside the portion of the award fixing 25% contributory negligence on the part of the deceased as well as for enhancement of compensation.

9. Per contra, the learned counsel appearing for the 2nd respondent- Insurance Company submitted that the Tribunal rightly fixed 25% contributory negligence on the part of the deceased for not wearing helmet at the time of accident. The appellants have not substantiated their claim that the deceased was doing load man job and was earning a sum of Rs.30,000/- per month. In the absence of any material evidence to prove the income of the deceased, a sum of Rs.9,000/- per month fixed by the Tribunal as notional income is not meagre. The amounts awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.



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10. 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.

11. From the materials available on record, it is seen that the accident had occurred due to the rash and negligent driving by the driver of the bus belonging to the 1st respondent. The Tribunal based on the Post Mortem report-Ex.P2, which shows that the injuries sustained by the deceased was only on the skull and after considering evidence of the eye witness as well as PW1 concluded that if the deceased would have wore the helmet/protective head gear he would have not sustained head injury and fixed 25% contributory negligence on the part of the deceased. However, this Court is of the view that following the judgment of the Division Bench of this Court in CMA.(MD).No.987 and 988 of 2014 dated 13.02.2017, ***Branch Manager (Oriental Insurance Company Limited) Vs Indirani and others***, it would be appropriate to fix 15% negligence on the part of the deceased and accordingly contributory negligence is modify to the extent of 15%.



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12. As far as quantum of compensation is concerned the Tribunal has fixed Rs.9,000/- as monthly income of the deceased which is on the lower side. However, this Court following the Division Bench judgment of this Court in *Andal and others Vs Avinav Kannan and others* [2019 (1) TN MAC 54 (DB)] fix Rs.14,500/- as monthly income of the deceased. Considering the age and dependency, the Tribunal followed the judgments of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, *[Sarla Verma & others Vs. Delhi Transport Corporation & another]* and 2017 (2) TNMAC 609 (SC), *[National Insurance Company Limited Vs. Pranay Sethi and others]* applied multiplier '14', granted 25% enhancement towards future prospects and deducted 1/3rd towards personal expenses of the deceased. Thus, the Tribunal has awarded a sum of Rs.12,60,000/- as compensation towards loss of income. The date of birth of the deceased is 02.08.1979 and he was aged more than 40 years at the time of accident under such circumstances, for the age group between 41 to 45 years the proper multiplier is '14' and for the age group 36 to 40 years multiplier is '15', the deceased herein is not aged about 41 years and he was less than 41 years. Hence, this Court is inclined to adopt multiplier '15'. Since the number of dependents are



four, the deceased personal expenses should be deducted as 1/4. Thus, by fixing Rs.14,500/- per month as notional income, since the claimants herein are five in numbers, deduction of one-fourth is made towards the personal and living expenses of the deceased, accordingly, the compensation towards loss of dependency is assessed as **Rs.24,46,875/-** [(Rs.14,500/- X (3/4) + Rs.3,625/- (25% of 14,500/-)] x 12 x 15]. The Tribunal has not awarded any amount towards loss of consortium, as per the judgments of the Hon'ble Apex Court in *United India Insurance Co. Limited v. Satinder Kaur and Ors.* [MANU/SC/0500/2020 : (2021) 11 SCC 780] and *Magma General Insurance Co. Ltd., vs Nanu Ram* [2018 ACJ 2018], all the claimants are entitled to consortium of Rs.40,000/- each. The amounts awarded by the Tribunal towards funeral expenses and loss of estate 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 income	9,45,000/- (after deducting 25% contributory negligence)	24,46,875/-	Enhanced
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of consortium	-	2,00,000/-	Granted
	Total		26,76,875/-	
	15% deduction towards contributory negligence	---	4,01,531/-	
	Total	Rs.9,75,000/-	22,75,344/-	Enhanced

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,75,000/- is hereby enhanced to Rs.22,75,344/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the enhanced 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.435 of 2020 on the file



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of Motor Accident Claims Tribunal Special District Judge, Salem. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

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Index : Yes / No
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K. RAJASEKAR, J.

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To

1.The Motor Accident Claims Tribunal,
Special District Judge, Salem.

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

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08.02.2024

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