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C.M.A.No.2503 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.2503 of 2023

1.Suresh S/o Rajappa
2.Meena W/o Suresh

... Appellants

Vs

1.D.N.Ramakrishnan S/o Narayappa
2.Royal Sundaram General Insurance Company Limited,
No.56/1, 2nd floor,
9th Main road, 5th Block,
Jaya Nagar,
Bangalore – 560 041.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the portion of the order passed in M.C.O.P.No.83 of 2020, dated 15.12.2022 on the file of the Motor Vehicle Accident Claims Tribunal/Additional District Judge (MCOP), Hosur, to the extent of fixation of the award amount and consequently to enhance the award amount Rs.5,00,000/-.



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For Appellants : Mr.J.Pradeep
For R2 : Mr.E.Rajadurai
for M.B.Gopalan & Associates

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants challenging the contributory negligence as well as the amount of compensation awarded by the Tribunal.

2. The learned counsel for the appellants would submit that on 16.11.2019 at 06.15 a.m. while the deceased was riding Bajaj Pulsar bike bearing Registration No.TN-70-T-9293 at Kelamangalam - Hosur Road near Tech company at Akkondapalli Village, a Lorry bearing Registration No.KA 07 B 0819 came in a rash and negligent manner and dashed against the two wheeler, due to which, the deceased had sustained grievous injuries and died on the spot.



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The learned Counsel for the appellants would further submit that the Tribunal has fixed the contributory negligence to an extent of 25% against the deceased for non-wearing of the helmet. PW2 /eye witness deposed that only due to the rash and negligent driving on the part of the driver of the Ashok Leyland Container lorry bearing Registration No.KA 07 B 0819, the accident had occurred. The main cause for the accident is only due to rash and negligent driving on the part of the offending vehicle as established by the evidence of eyewitness/P.W.2. When such being the case, the Tribunal ought to have fastened the entire liability on the part of the driver of the offending vehicle which was insured with the 2nd respondent/Insurance Company. Of course, if the deceased had worn the helmet, his life could have been saved during the accident leaving with injuries. However, merely because not wearing the helmet by the deceased was not justifiable on the part of the driver to fasten the contributory negligence to an extent of 25% on the part of the deceased, when the cause for the accident was found due to rash and negligent driving of the driver of the lorry. Therefore, this Court is of the view that 25% of contributory negligence fastened on the deceased for not wearing the helmet is not



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sustainable and the same is set aside.

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4. As far as the quantum of compensation is concerned, the learned Counsel for the appellants questioned about the fixation of notional income of the deceased. The Tribunal has taken the income of the deceased as Rs.8,931/- only. However, the learned Counsel submit that the appointment order of the deceased which was marked as Ex.X-1 shows the monthly income as Rs.10,300/-. Therefore, he would fairly submit that Rs.10,300/- may be taken as the income of the deceased.

5. In view of the above submission, this Court fixes the notional monthly income of the deceased as Rs.10,300/- and the future prospects as 40%, since the deceased died as a bachelor from which 50% for personal expenses is to be deducted. Parental consortium is fixed as Rs.40,000/- each. It is to be noted that the compensation awarded for under heads by the Tribunal would remain the same.



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the Court below is directed to transfer the entire amount to the bank account of both the parents of the deceased and the claimants, equally, by way of RTGS, within a period of 3 weeks thereafter. No costs.

19.01.2024

veda
Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order



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KRISHNAN RAMASAMY,J.

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To:

The Motor Accidents Claims Tribunal/
Additional District Judge (MCOP),
Hosur.

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