



CM.A.No.528 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2024

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI,J.**

C.M.A.No.528 of 2021

1.Raihana Begam
2.Mohammed Auif

...Appellants

Vs.

1.Surya
2.The Divisional Manager,
The New India Assurance Company Ltd.,
C.S.I. Building, Officers Line,
Vellore – 632 001

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, to allow the above Civil Miscellaneous Appeal and enhance the award passed in judgment and decree dated 12.03.2020 made in



CM.A.No.528 of 2021

WEB COPY M.C.O.P.No.811 of 2017 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellants : Mr.M.Sivakumar
For Respondents : Mr.D.Rajaraman for R1
Mr.M.Krishnamoorthy for R2

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award and decree dated 12.03.2020 passed in M.C.O.P.No.811 of 2017 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

2. For the sake of convenience, the parties herein are referred to as they are ranked before the Tribunal.

3. The 1st petitioner is the mother and the 2nd petitioner is the father of the deceased Minhazul Kareem. On 25.06.2017 at about 4:25 a.m, the deceased was riding on pillion in a two wheeler bearing Registration No.TN



CM.A.No.528 of 2021

04 AM 8978 at Bangalore to Vellore road near Kingini Amman temple at that time, the rider of the two wheeler TN 04 AM 8978 has driven the vehicle in a rash and negligent manner without following the traffic rules and dashed the vehicle against the centre barricade. Due to the accident, the deceased sustained severe head injury and injuries all over the body. Immediately, he was admitted in Apollo KH Hospital, Melvisharam and subsequently he died. The accident was reported to Pallikonda Police and they have registered a case in Crime No.141/2017 under Section 279, 337 and 304(A) of IPC. Prior to the accident, the deceased was hale and healthy, and he was studying B.E., III year. Due to the sudden demise of the deceased, the petitioners' future is fully doomed. The 1st respondent is the owner-cum-rider and the 2nd respondent is the insurer of the motorcycle bearing Registration No. TN 04 AM 8978 and both of them are jointly and severally liable to pay compensation to the petitioners.

4. The 2st respondent in its counter affidavit stated that the accident had occurred only due to rash and negligent driving by the rider of the



CM.A.No.528 of 2021

motorcycle bearing Registration No.TN 04 AM 8978 who dashed against the center barricade.

5. Accordingly, the Tribunal framed the following points for consideration:

I. Whether the accident had happened due to the rash and negligent driving of the 1st respondent?

II. Whether the respondents are liable to pay the compensation? Which respondent is liable?

III. Whether the petitioners are entitled for the compensation, if so, to what extent?

6. Before the Tribunal, the 1st petitioner was examined as P.W.1. On Nazrudeen Meeran was examined as P.W.2. Ex.P1 to Ex.P9 were marked on the side of the petitioners. No oral and documentary evidence let in on the side of the respondents.

7. The Tribunal after considering the materials on record, it came to the conclusion that the accident took place as alleged and the deceased also contributed to the accident by not wearing the helmet at the time of accident.



CM.A.No.528 of 2021

WEB COPY

Hence, the Tribunal apportioned 15% of Contributory Negligence in the amount of compensation awarded. The Tribunal awarded a sum of Rs.14,30,800/- and apportioned 15% of Contributory Negligence on the part of deceased for not wearing helmet at the time of the accident. The 2nd respondent/Insurance Company was directed to pay the balance 85% of compensation with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit, excluding period of default if any. Aggrieved by this, the present appeal is preferred, by the Insurance Company challenging the quantum of compensation awarded by the Tribunal.

8.For the sake of convenience, the parties are referred to has described in the claim petition.

9. The learned counsel appearing for the Appellant/Insurance Company submits that the income of the deceased has not been correctly calculated by the Tribunal. Except Ex.P8, no other document is filed on the side of the claimants to prove that the deceased was pursuing B.E degree at



CM.A.No.528 of 2021

WEB COPY

the time of the accident. Therefore, the monthly income of the deceased fixed by the Tribunal at Rs.9000/- is erroneous and liable to be set aside.

10. On the other hand, the learned counsel appearing for the claimants would submit that through Ex.P.8 it is established that the deceased was pursuing B.E.3rd year at the time of the accident as per the decision rendered by Hon'ble Division Bench in ***United India Insurance Company Limited Vs. Rakhi Kumari [2020 (1) TN MAC 236 (DB)]***, the notional income of the deceased ought to have been fixed at Rs.15,000/-. However, the Tribunal has fixed only Rs.9000/- as monthly income of the deceased, which has to be enhanced.

11. Heard on both sides, records perused.

12. On perusal of Ex.P8 Certificate issued by the Christ University, Bengaluru dated 12.01.2019 and 22.02.2017, it reveals that at the time of accident, the deceased was pursuing his B.E. Degree. Therefore, Ex.P.8 is sufficient to establish that at the time of accident, the deceased was pursuing



CM.A.No.528 of 2021

WEB COPY

B.E. in the Christ University at Bangalore. Though no appeal or cross appeal is filed by the claimants, this Court can enhanced the amount of compensation even in the absence of appeal or cross appeal by the claimants if on the face of the award or even in the light of the evidence on record, and keeping in view, the settled legal position regarding the claimants being entitled to just compensation and it is also being the statutory duty of the Court/Tribunal to award just compensation. Therefore, this Court in the exercise of the appellate jurisdiction deem it appropriate to fix the notional income of the deceased as Rs.15,000/- per month, who was pursuing his 3rd year B.E. ,degree as per the decision rendered by Hon'ble Division Bench in ***United India Insurance Company Limited Vs. Rakhi Kumari [2020 (1) TN MAC 236 (DB)]***, the deceased was aged 19 years at the time of accident. The appellants are entitled to 40% enhancement towards future prospects. Applying the multiplier '18' and after deducting 1/2rd towards the personal expenses of the deceased, the compensation granted by the Tribunal towards loss of income is modified to Rs.23,78,000/- {[Rs.15,000/- + Rs.6,000/- (40% of Rs.15,000/-)] X 12 X 18 X 1/2}.



CM.A.No.528 of 2021

WEB COPY

13. On perusal of the award passed by the Tribunal, it is found that for Love and Affection, only a sum of Rs.50,000/- was ordered. As per *Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram [AIR ONLINE 2018 SC 1249]*, the Tribunal ought to have fixed Rs.80,000/- towards loss of Filial Consortium to the parents of the deceased. As per the decision in *The National Insurance Company Limited vs Pranay Sethi and others [2017 (16) SCC 680]* a sum of Rs.15,000/- is awarded towards Loss of Estate.

14. The Tribunal has rightly apportioned 15% as Contributory Negligence on the part of the deceased for not wearing of helmet at the time of accident. The said finding of the Tribunal is confirmed.

15. Applying the principle laid down in *Prenai Sathy* case no amount can be awarded towards transport expenses. The Tribunal has awarded a sum of Rs.5000/- towards Transport expenses which is incorrect



CM.A.No.528 of 2021

WEB COPY

and accordingly set aside. The compensation awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl.No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1	Loss of Income	13,60,800/-	22,68,000/-	modified
2	Love and Affection	50,000/-	50,000/-	confirmed
3	Loss of Filial Consortium	-	30,000/-	granted
4	Loss of Estate	-	15,000/-	granted
5	Funeral Expenses	15,000/-	15,000/-	confirmed
6	Transport expenses	5,000/-	-	set aside
	Total	Rs.14,30,800/-	Rs.23,78,000/-	enhanced by Rs.9,47,200/-

16.15% of contributory negligence fixed by the Tribunal on the part of the deceased is hereby confirmed and 85% of the total award amount comes to Rs.20,21,300/-.



CM.A.No.528 of 2021

WEB COPY

17. In the result, this Civil Miscellaneous Appeal is partly allowed.

The compensation of Rs.14,30,800/- awarded by the Tribunal is enhanced to Rs.20,21,300/-. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court with interest at the rate of 7.5 % from the date of claim petition till the date of realisation, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the said amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

06.02.2024

mac/vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

To

1. The Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

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

10/11



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CM.A.No.528 of 2021

K.GOVINDARAJAN THILAKAVADI, J.

mac/vsn

C.M.A.No.528 of 2021

06.02.2024