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CMA.No.3268 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.3268 of 2024

1. M.Saravanan
2. S.Saraswathy
3. V.Sarala
4. G.Muniyammal

...Appellants

Vs.

1. M/s.RBN Enterprises,
No.3, Walaja Main Road,
Sholinghur and Taluk,
Vellore District – 631 102.
2. The Divisional Manager,
United India Ins.Co.Ltd.
No.13-a, SBI Complex,
Nethaji Road, Manjakuppam,
Cuddalore – 607 001.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order in M.C.O.P.No.735 of 2020 dated 26.03.2024 on the file of the Motor Accident Claims Tribunal / Special District Court II, Cuddalore.

For Appellants : M/s.Ramya.V.Rao

For Respondents : Mr.J.Chandran for R2



CMA.No.3268 of 2024

WEB COPY

JUDGMENT

Challenging the judgment and decree dated 26.03.2024 passed in M.C.O.P.No.735 of 2020 on the file of the Motor Accident Claims Tribunal, The (Special Sub Court No.2, Motor Accident Claims Tribunal / Special District Court II, Cuddalore, the claimants have filed the above appeal as against the quantum of compensation and the negligence fixed on the part of the deceased.

2. In view of the judgment being passed, notice to the first respondent is dispensed with.

3. It is the case of the appellants / claimants that, on 19.05.2020 at about 19.20 hours, when the deceased was riding a two wheeler bearing Regn.No.TN 73 Q 8201, at that time a goods carrier bearing Regn.No.TN 73 AA 0288 belonging to the first respondent driven by its driver came in a rash and negligent manner and dashed the deceased, due to which , the deceased sustained grievous injuries and succumbed to death. Thereby, the appellants, who are the son, daughters and mother of the deceased



CMA.No.3268 of 2024

WEB COPY

have filed a claim petition in MCOP.No.735 of 2020 claiming a compensation of Rs.30,00,000/-.

4. Before the Tribunal, the claimants examined two witnesses viz. P.W.1 and P.W.2 and marked Exhibits P.1 to P.11 and the respondents have neither marked any exhibits nor examined any witnesses. After trial, the Tribunal, on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place solely due to the rash and negligent driving on the part of the driver of the 1st respondent's Goods Carrier and awarded Rs.17,76,000/- after deducting 10% contributory negligence on the part of the deceased to the appellants. Being not satisfied with the quantum of compensation awarded by the Tribunal and the negligence fixed on the part of the deceased, the claimants have come up with this appeal.

5. Learned counsel for the appellants / claimants submitted that though the above said accident happened solely due to the rash and negligent driving on the part of the driver of the 1st respondent's Goods carrier, however, the Tribunal has fixed 10% contributory negligence on



CMA.No.3268 of 2024

WEB COPY

the part of the deceased for not wearing helmet at the time of accident which is highly excessive. Hence the same may be reduced. Moreso, the accident is of the year 2020 and at the time of accident, the deceased was aged about 50 years, who was a weaver, earning not less than a sum of Rs.25,000/- per month, however, the tribunal had erroneously taken the notional income of the deceased as Rs.12,000/-, which is very meagre and the same is contrary to the ratio laid down by the Hon'ble Apex court in catena of decisions and thereby, the same has to be interfered with. Further, the compensation awarded under other heads are also on the lower side and the same needs to be enhanced. Accordingly, she prayed for appropriate orders.

6. Per contra, the learned counsel appearing on behalf of the 2nd respondent-Insurance Company contended that, the rider of the two wheeler has to necessarily wear helmet as per the provisions of the Motor Vehicle Rules and by considering all the relevant documents, the Tribunal has rightly awarded the compensation after deducting 10% contributory negligence on the part of the deceased for non-wearing of helmet, which does not require any interference. Insofar as the compensation awarded



CMA.No.3268 of 2024

WEB COPY

under the other heads are concerned, upon appreciating the oral and documentary evidence, the Tribunal has awarded the above compensation, which does not require any interference. Accordingly, he prays for dismissal of the appeal.

7. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The major grievance of the Appellants/claimants is with regard to the quantum of compensation awarded by the Tribunal and the 10% negligence fixed as against the deceased.

9. Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2020 and at the time of accident, the deceased was aged about 50 years, who was a Weaver, however, the Tribunal had fixed the notional income at Rs.12,000/-, which is on the



CMA.No.3268 of 2024

WEB COPY

lower side. Applying the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TANMAC 459**, and also considering the age of the deceased as also the claimants, fixing a notional income of Rs.15,000/- and adding future prospects at 25% , as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in **2017 (16) Supreme Court Cases 680**, the income per month is quantified at Rs.18,750/- (15,000 + 3,750) and after deducting 1/4th towards personal expenses, the monthly income of the deceased would be at Rs.14,062/- (Rs.18,750 – 4688) and as per the Judgment of the Hon'ble Apex Court in *Sarla Verma and others Vs. Delhi Transport Corporation* and another reported in 2009 (2) TN MAC 1 (SC), the right multiplier to be adopted is '13' and hence, the loss of income would be at Rs.21,93,672/- (Rs.14,062 x 12 x 13).

10. A sum of Rs.10,000/- has been awarded under the head Transport expenses which is not sustainable. Hence the same is rejected. Insofar as the compensation awarded under the other heads are concerned, this Court is of the view that the compensation awarded under



CMA.No.3268 of 2024

WEB COPY

other heads are just and reasonable and the same does not require interference of this Court.

11. As per the provisions of the Motor Vehicle Rules, it is mandatory for the rider to wear helmet while riding the motor cycle and for not complying the same, the Tribunal has rightly fixed 10% contributory negligence on the part of the deceased, which need not be interfered with.

12. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of Income	17,55,000/-	21,93,672/- (enhanced)
Loss of parental consortium to 1 to 3 claimants	1,32,000/-	1,32,000/-
Loss of filial consortium to 4 th claimant	44,000/-	44,000/-
Funeral expenses and loss of estate	33,000/-	33,000/-



CMA.No.3268 of 2024

WEB COPY

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Transport Expenses	10,000/-	-
Total	19,74,000/-	24,02,672/-
After deducting 10% Contributory Negligence	17,76,600/-	21,62,405/-

13. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.735 of 2020 is modified by enhancing the compensation amount from **Rs.17,76,600/- to Rs.21,62,405/-** after deducting 10% contributory negligence on the part of the deceased for not wearing helmet. The 2nd respondent Insurance is directed to deposit the said amount to the credit of MCOP.No.735 of 2020 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants/claimants through RTGS within a period of two weeks thereafter, upon production of proof with regard to payment of Court fee



CMA.No.3268 of 2024

WEB COPY

on the enhanced compensation. It is underscored that the appellants are not entitled to any interest for the default period, if any. The compensation awarded by this Court shall be apportioned among the appellants equally, with proportionate interest and costs. No costs.

13.12.2024

rap
NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No



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CMA.No.3268 of 2024

M.DHANDAPANI, J.

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To:

1. Motor Accident Claims Tribunal / Special District Court II, Cuddalore.
2. The Section Officer,
V.R. Section, High Court, Madras.

CMA.No.3268 of 2024

13.12.2024