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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.17 of 2020
and
Cross Obj. No.25 of 2024
and
C.M.P.No.152 of 2020

C.M.A.No.17 of 2020:

The Divisional Manager,
United India Insurance Co. Ltd.,
Divisional Office, Katpadi,
Ramanas, No.84, 2nd Floor,
14th East Cross Road, Vellore – 632 006. ... Appellant

Vs.

1.Nirmala

2.Maheswari @ Mahesh

3.Meena @ Meenatchi

4.V.Poongodi ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 09.04.2019 made in MCOP.No.398 of 2018 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Hosur.

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For Appellant : Mr.S.Arunkumar

For Respondents : Mr.SP.Yuvaraj for R1 to R3

R4 – No appearance

Cross Objection No.25 of 2024:

1.Nirmala

2.Maheswari @ Mahesh

3.Meena @ Meenatchi ... Appellants

Vs.

1.The Divisional Manager,
United India Insurance Co. Ltd.,
Divisional Office, Katpadi,
Ramanas, No.84, 2nd Floor,
14th East Cross Road, Vellore – 632 006.

2.V.Poongodi ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Order 41 Rule 22 of the Code of Civil Procedure to enhance the compensation amount and fix the entire liability on the appellant / 1st respondent awarded in the judgment and decree dated 09.04.2019 made in MCOP.No.398 of 2018 on the file of the Motor Accident Claims Tribunal/ Additional District Judge, Hosur by allowing this cross appeal in CMA.No.17 of 2020.

For Appellants : Mr.SP.Yuvaraj

For Respondents : Mr.S.Arunkumar for R1

R2 – No appearance

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COMMON JUDGMENT

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

The appeal is by the Insurance Company and challenge is to the quantum of compensation.

2. The claimants who are the mother and sisters of the deceased Ajith Kumar sought for a compensation of Rs.50,00,000/- for his death in a motor accident that took place on 19.11.2015 around 4.00 p.m on the Bangalore - Hosur National Highway.

3. According to the claimants, the accident occurred due to the rash and negligent driving of the tipper lorry bearing Reg.No.TN-27-Y-3832 by its driver. It was claimed that the lorry dashed against the two-wheeler that was ridden by the deceased Ajith Kumar from behind. As a result of the impact, the deceased was thrown off the two-wheeler, sustained grievous injuries and died on 05.12.2015. They also claim that the deceased was employed as a Supervisor in a Departmental store at Hosur, drawing a salary of Rs.16,500/- per month, apart from doing a business in ghee. According to the claimants, the deceased was earning about Rs.22,000/- per month in all.

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Claiming that the deceased was the sole bread-winner of the family and having lost him, the family has lost all monetary support and the claimants who are the mother and two un-married sisters are left without any income.

4. The claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimants. It was contended that the deceased did not have a valid driving license and he by his own rash and negligent act contributed to the accident. It was also contended that the quantum of compensation claimed was excessive and the income suggested is imaginary. The dependency was also disputed.

5. At trial, before the Tribunal the 1st claimant, mother of the deceased was examined as PW1 and one of his sisters the 3rd claimant was examined as PW2. Exs.P1 to P14 were marked. The Insurance Company did not chose to let in any oral evidence, but, the copies of the accident registers were filed as Exs.R1 and R2.

6. The Tribunal upon consideration of the evidence on record, relying upon the FIR and the evidence of PW1 and PW2 concluded that the rash

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and negligent driving of the lorry was the cause of the accident. It therefore found that the Insurance Company as the insurer of the lorry is liable to pay the compensation.

7. On the quantum, though Ex.P5 was produced as salary certificate, since, no one connected with the document was examined, the learned Tribunal took the notional income at Rs.16,500/-. The Tribunal fixed 40% towards future prospects, deducted 1/3rd towards personal expenses of the deceased and applying the multiplier of '18' arrived at the total loss of dependency at Rs.33,26,400/-. The Tribunal also awarded the following amounts under the following heads:-

Loss of Love and affection	Rs.30,000/-
Transportation	Rs.10,000/-
Funeral Expenses	Rs.15,000/-
Loss of estate	Rs.20,000/-
Medical bills	Rs.3,67,687/-

8. The total compensation thus arrived at was Rs.37,69,087/-. The Tribunal directed deduction of 10%, since it was found that the deceased had ridden the two-wheeler without a proper driving license. Aggrieved the Insurance Company is on appeal.

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9. We have heard Mr.S.Arunkumar, learned counsel appearing for the appellant, Insurance Company and Mr.SP.Yuvaraj, learned counsel appearing for the respondents 1 to 3 / claimants. The 4th respondent though served is not appearing either in person or though counsel duly instructed. She also remained *ex parte* before the Tribunal.

10. Mr.S.Arunkumar, learned counsel appearing for the appellant would vehemently contend that apart from not holding a valid driving license, the deceased had driven the two-wheeler in a rash and negligent manner, resulting in the accident and therefore the Tribunal was not right in attributing entire negligence on the part of the lorry driver. He would also contend that the fixation of notional income at Rs.16,500/- for the accident that had occurred in the year 2015 is on the higher side. He would therefore seek reduction of the income as well as increase in the percentage of contributory negligence that has been adopted by the Tribunal.

11. Contending contra Mr.SP.Yuvaraj, learned counsel appearing for the claimants would submit that since no evidence has been placed by the

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Insurance Company or the owner of the vehicle in support of the claim that the deceased had contributed to the accident, it is not open to the appellant to contend that we should presume negligence on the part of the rider of the two-wheeler.

12. The learned counsel for the respondents would further contend that even in the absence of license, unless it is shown that there was negligence on the part of the rider of the two-wheeler, a deduction for non-possession of license should not have been made. He would also draw our attention to the judgment of the Hon'ble Supreme Court in ***Dinesh Kumar.J @ Dinesh J Vs. National Insurance Co. Ltd. And others*** reported in ***2018 (1) TN MAC 34 (SC)*** in support of his above contention.

13. On the income, the learned counsel for the respondents would submit that Rs.16,500/- taken as notional income is just and reasonable, considering the fact that the deceased was a resident of Hosur, an industrial town situate very near to Bangalore. He would submit that the salaries in industrial towns in Tamil Nadu like Hosur, Coimbatore, Tiruppur etc., are always higher than the salaries that are paid in other places and the cost of

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living in those towns / cities is also higher than the other places. He would implore us to take judicial notice of the above fact and sustain the fixation made by the Tribunal.

14. We have considered the rival submissions.

15. We find the contention of the learned counsel for the respondents/ claimants justifiable as regards the question of contributory negligence. Neither the Insurance Company nor the owner of the vehicle had chosen to let in any evidence. At the same time, we are unable to accept the contention of the learned counsel that no deductions should be made for non-possession of license, unless negligence on the part of the deceased is established. No doubt, the Hon'ble Supreme Court in ***Dinesh Kumar.J @ Dinesh J Vs. National Insurance Co. Ltd. And others*** reported in ***2018 (1) TN MAC 34 (SC)*** has observed that even if the victim of the accident did not possess the driving license deduction should not be made, unless there is evidence to show that there was negligence on the part of the victim. In the case on hand the deceased has ridden the two-wheeler on a National Highways. He was 19 years old and the damages that have been caused to the two-wheeler

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as reflected by the Accident Register to a certain extent demonstrates that the theory of the claimant that the lorry came from behind and hit the two-wheeler is not fully correct. All the damages have been caused to the front side of the two-wheeler viz., the handle bar, front wheel mudguard, head light, front indicator and brake levers which are in the handle bar of the vehicle. However, since there is no evidence on the side of the Insurance Company on the nature of the accident, we are constrained to uphold the finding of the Tribunal regarding negligence. At the same time, we find that the contents of the accident register is sufficient to presume certain amount of negligence on the part of the deceased also. Hence, we sustain the deduction of 10% made by the Tribunal for non-possession of license.

16. On the quantum, we find that the Tribunal has assumed the income at Rs.16,500/-. Ex.P5 is a certificate issued on a letter head of a Departmental store and marked through PW2, who is the sister of the deceased. The author of the document has not been examined. Therefore, the learned Tribunal was justified in rejecting the said document and fixing the notional income. For the accident that occurred in 2015, fixing notional income at Rs.16,500/- appears to be definitely on the higher side. The

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income of the last grade servant in the Government service at that point of time was hovering around Rs.12,000/-. However, we must take judicial notice of the fact that the victim was the resident of Hosur, a very important industrial town in south India. It is situated just about 40 kms from Bangalore, which has now become the hub of Information Technology Industry. Both the income as well as the cost of living are definitely higher than the other places in the state may be except Chennai, Tiruppur and Coimbatore. Therefore, taking into account all these factors, we find that fixation of a sum of Rs.15,000/- per month as notional income would be just and proper.

17. On the other heads viz., the conventional damages the Tribunal has awarded Rs.30,000/- for loss of love and affection for all the three claimants. It should be Rs.1,20,000/- (Rs.40,000/- x 3). The award under the expenses for transportation and funeral expenses are confirmed. The award under the head of loss of estate is reduced to Rs.15,000/-. The compensation granted for medical expenses on the basis of bills is confirmed.

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18. If worked out at Rs.15,000/- per month, the loss of dependency would be 15,000/- + Rs.6,000/- - Rs.7,000/- x 12 x 18 = Rs.30,24,000/-. To this we should add the compensation on other heads;

Loss of dependency	Rs.30,24,000/-
Loss of Love and affection (Rs.40,000/- x 3)	Rs.1,20,000/-
Transportation	Rs.10,000/-
Funeral Expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Medical bills	Rs.3,67,687/-
Total	**Rs.35,51,687/-**

19. We have affirmed the conclusion of the Tribunal to deduct 10% towards contributory negligence. Therefore, a sum of Rs.3,55,168/- has to be reduced. The total compensation that is awarded is Rs.31,96,519/- and the same is rounded off to **Rs.31,96,500/-.** The interest granted at 7.5% per annum is confirmed.

20. It is stated that the Insurance Company deposited 50% of the compensation awarded by the Tribunal. The Insurance Company is granted eight (8) weeks time to deposit the balance amount. The compensation is

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apportioned as follows:-

The 1st claimant mother of the deceased would be entitled to **Rs.16,96,500/-** with proportionate interest. The two sisters will be each entitled to **Rs.7,50,000/-** with proportionate interest. The claimants are entitled to withdraw the amount already in deposit and also the further sum that is to be deposited.

21. This **Civil Miscellaneous Appeal is allowed in part** and the award of the Tribunal is modified as above. In view of the reasons alluded to supra, the **cross objection is dismissed.** No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M., J.) **(R.S.V., J.)**
07.06.2024

dsa
Index : No
Internet : Yes
Neutral Citation : No
Speaking order

To

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The Motor Accident Claims Tribunal,
Additional District Judge, Hosur.

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