



C.M.A. No. 3479 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 3479 of 2021

1. Chinnaiyan
2. Govindaraj
3. Manikandan
Vs. ... Appellants / Petitioners

1. Selvaraj
2. M/s. IFFCO-TOKIO General Insurance Co. Ltd.,
Represented by its Manager,
Kingston Park, II Floor,
No.19/1, Ramalinga Nagar,
Woraiyur, Tiruchy - 620 003.
Policy No.87218137. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 22.12.2020 passed in M.C.O.P. No. 59 of 2018 on the file of the Principal District Judge, Motor Accident Claims Tribunal, Perambalur.

For Appellant : M/s. C. Vidhusan
For R1 : No Appearance
For R2 : M/s. N. Somasundar



C.M.A. No. 3479 of 2021

JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimants challenging the contributory negligence fixed and for enhancement of compensation awarded in M.A.C.T.O.P. No. 59 of 2018, dated 22.12.2020 on the file of the Principal District Judge, Motor Accident Claims Tribunal, Perambalur.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 15.05.2017, at about 8:15 PM, the deceased Minor Divya, aged 12 years was travelling as a Pillion rider along with his father in a TVS XL Super Heavy Duty moped bearing Registration No.TN-46-T-7221 on the Perambalur to Thuraimangalam main road from west to east, while they reached near "U" turn Nehru Nagar waiting to cross the road, another TVS XL motorcycle bearing Registration No.TN-46-T-7221, belongs to the first respondent and insured with the second respondent came from east to west, ridden by its rider in a rash and negligent manner, dashed against the claimant's TVS XL Super Heavy Duty moped, thereby causing grievous



injuries to them. The deceased Divya sustained multiple grievous injuries and succumbed to the same on the next day in the Government Hospital, Trichy. A criminal case was registered against the first respondent's rider in Cr.No.550/2017, U/s.279, 337 and 304(A) of IPC on the file of Perambalur Police Station. For the loss of deceased Divya, the claimants, who are the father and brothers of the deceased has filed claim petition seeking compensation for a sum of Rs.10,00,000/- under Sections 140 and 166 of the Motor Vehicles Act, 1988.

4. The first respondent remained ex-parte. The second respondent - insurance company has filed a counter and disputed the manner in which the accident has taken place and contended that the accident has taken place only due to the first claimant, who has ridden the motorcycle in a rash and negligent manner without wearing helmet and valid driving licence, invited the accident. The insurance company also contended that there is a violation of policy condition on the ground that the rider of the first respondent has no valid driving licence at the time of accident. The insurance company also disputed the age, income and occupation of the deceased and dependency of the claimants and further contended that the



compensation claimed by the petitioners are highly excessive.

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5. Before the Tribunal, on the side of the claimants, P.W.1 was examined and Exs.P.1 to P.5 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Exs.R.1 to R.5 and Ex.X.1 were marked.

6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the first respondent is the tortfeasor and due to his rash and negligence the accident has taken place. In point no.2, the Tribunal has fixed the contributory negligence in the ratio of 25:75 on the first claimant, who has ridden the two wheeler in which the deceased has travelled as a pillioner and the respondent respectively, and directed the second respondent - insurance company to pay the compensation to the claimants and recover the same from the first respondent. In point no.3, the Tribunal has quantified and granted compensation for a sum of Rs.3,75,000/- after deducting 25% contributory negligence on the part of the first claimant along with the interest @ 7.5% per annum from the date of filing of petition till the date of realization.



7. Aggrieved over the contributory negligence fixed by the Tribunal and for enhancement of compensation, the claimants have filed this appeal.

8. The learned counsel for the claimants submitted that the Tribunal without any evidence has fixed the contributory negligence of 25% on the part of the first claimant, who has ridden the motorcycle in which the deceased has travelled as a pillioner on the ground that the first claimant was not having a valid driving licence, which was factually incorrect and there is no evidence placed on record to show that the first claimant was not having a valid driving licence. Though the Tribunal has held that the first respondent's rider is the tortfeasor and due to his rash and negligence only the accident has taken place and there is no evidence to show that first claimant, who is the father of the deceased has contributed to the accident. He also further submitted that the compensation awarded is also on the lower side, hence prays to set aside the contributory negligence fixed by the Tribunal and to enhance the compensation.

9. Per contra, the learned counsel for the insurance company has



submitted that the Tribunal based on the evidence placed on record has rightly fixed the contributory negligence on the part of the first claimant and he further submitted that the Tribunal has awarded compensation without deducting personal and living expenses of the deceased, hence prays to confirm the contributory negligence fixed by the Tribunal and to deduct 50% of the income of the deceased towards her personal and living expenses.

10. I have considered the submissions made on both sides and perused the materials available on record.

11. Before the Tribunal, the first claimant himself has examined as P.W.1 and according to him, the deceased was travelling along with him as a pillion rider and while they were waiting to cross the road for taking U-turn, a two wheeler ridden by the first respondent in a rash and negligent manner, hit on his two wheeler, thereby caused the accident. There was no other contra evidence produced to dispute the evidence of P.W.1 regarding the manner in which the accident has taken place, hence in the absence of any other contra evidence, the Tribunal has rightly held that the first respondent's rider is responsible for the accident.



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12. The Tribunal based on the fact that no licence has been produced by the first claimant, held that the first claimant has also contributed to the accident and fixed contributory negligence of 25%. This Court is unable to appreciate the same, since in this case the Tribunal has accepted the evidences placed on record and held that the first respondent is the tortfeasor and there is no evidence to show that the first claimant was not able to drive the two wheeler, which resulted in accident. This Court in catena of judgments has held that non-possession of driving licence by the injurer or by the driver of vehicle in which the injured travelled, alone is not a ground to attribute contributory negligence. The Hon'ble Apex Court in ***Sudhir Kumar Rana vs. Surinder Singh and Others [(2008) 12 SCC 436]*** has reiterated the above legal position as follows:

“8. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the Courts below that it was the driver of the mini-truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of



contributory negligence.”

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13. The Tribunal failed to advert to the fact that the deceased herein is only a pillion rider and due to the negligent act of first claimant, the compensation could not be reduced for the dependants of deceased herein. Since, in this case there is no evidence placed on record to show that the first claimant has ridden the two wheeler in negligent manner, fixation of 25% contributory negligence on the ground of non-possession of valid driving licence is not proper. Accordingly, the contributory negligence fixed on the first claimant by the Tribunal is hereby set aside.

14. The next contention raised by the learned counsel for the insurance company is that 50% of the deduction has to be made towards her personal and living expenses on the compensation fixed for the death of the deceased. This Court is of the view that the same could not be accepted since the Tribunal has awarded compensation as per the Hon'ble Apex Court judgment in ***Kishan Gopal and another vs. Lala and others [2014 1 SCC 244]***, wherein the compensation has been calculated treating Rs.30,000/- as notional income including future prospectus in place of Rs.15,000/- as specified in the II Schedule of the Motor Vehicles Act and adopted multiplier



of "15" as specified in the judgement of *Sarla Verma and Others vs. Delhi Transport Corporation and Another [(2009) 6 SCC 121]* and accordingly, awarded compensation of Rs.4,50,000/- (Rs.30,000/- X 15) under loss of dependency and Rs.50,000/- under other conventional heads. This Court is of the view that the Tribunal has rightly considered the ratio laid down in *Kishan Gopal case* cited supra and granted a just compensation, hence this Court is inclined to confirm the same.

15. As far as the principle of 'pay and recover' ordered by the Tribunal is concerned, the same is hereby confirmed.

16. In the result, this Civil Miscellaneous Appeals is partly allowed and the contributory negligence of 25% fixed on the part of the first claimant is hereby set aside, hence the compensation awarded by the Tribunal at Rs.3,75,000/- with deduction of 25% contributory negligence is hereby modified to **Rs.5,00,000/- [Rupees Five Lakhs only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance company is directed to deposit the amount



C.M.A. No. 3479 of 2021

awarded 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.Nos.59 of 2018 on the file of the Principal District Judge, Motor Accident Claims Tribunal, Perambalur and the insurance company is given liberty to recover the same from the first respondent. On such deposit, the appellants/ claimants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

09.01.2024

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



C.M.A. No. 3479 of 2021

To:

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Perambalur.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

K. RAJASEKAR, J.



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C.M.A. No. 3479 of 2021

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C.M.A. No. 3479 of 2021

09.01.2024