IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 05.01.2024	Pronounced on 19.01.2024

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2050 of 2021

1.E.Renuka
D/o.Elango, Hindu aged about 19 years

2.E.Reshma – Minor
Rep. by their grandfather and guardian V.Ranganathan
Hindu, aged about 14 years
Both are residing at
No.15, Throwpathiamman Koil Street
Saidapet, Chennai 600 015 ... Appellants

Vs.

1.Elango
S/o.Kandappa Reddy
No.170/6, 9th Main Road
1st Block, 3rd Stage, Manjunath Nagar
Bangalore
Karnataka State Pin code 560 078

2.New India Assurance Company Limited
(Motor Third Party Claims HUB)
No.45, Moore Street, 5th Floor
Chennai 600 001. ... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 09.04.2019 made in MACTOP.No.6196 of 2015 on the file of the Chief Judge, Court of Small Causes, Chennai.

For Appellants : Ms.M.Malar

For Respondents : Mr.K.Vinod (for R2)

JUDGMENT

The Appeal has been filed against the judgment and decree dated 09.04.2019 made in MACTOP.No.6196 of 2015 on the file of the Chief Judge, Court of Small Causes, Chennai.

2.The claim Petitioners are the Appellants herein and they filed this Appeal, seeking enhancement of compensation awarded in MACTOP.No.6196 of 2015 on the file of the Chief Judge, Court of Small Causes, Chennai, on 09.04.2019. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The factum of the accident, manner of the accident, rash and negligent driving on the part of the driver of the 1st Respondent's vehicle, insured with the 2nd Respondent are not under challenge in this Appeal. Accordingly, the finding rendered by the trial Court that the accident taken place due to the rash and negligent driving of the driver of the 1st Respondent's vehicle, insured with the 2nd Respondent are hereby confirmed.

4.During the trial, on the side of the claim Petitioners, PW1 & PW2 were examined & Ex.P.1 to Ex.P.7 were marked and on the side of the Respondents, RW1 was examined and Ex.R.1 to Ex.R.4 were marked.

5.Heard the learned counsel appearing on behalf of the claim Petitioners and the learned counsel appearing on behalf of the Insurance Company.

6.The first Respondent is the father of the claim Petitioners. The same is not disputed. The deceased is the Mother of the claim Petitioners and wife of the first Respondent. The Insurance policy coverage is also not disputed. The daughters of the deceased/Mullai filed the claim Petition for the death of their Mother in the road transport accident occurred on 26.05.2015.

7.As per the evidence of PW1 coupled with Ex.P.1, this Court finds that on 26.05.2015 at about 8.00 hours, while the deceased was travelling in the 1st

Respondent's motor cycle, who happens to be the husband of Mullai, bearing Registration No.KA 02 HZ 5450 as a pillion rider, she fell down from the motor cycle and sustained grievous injuries and died in the hospital on 29.5.2015.

8.The owner of the vehicle, father of the claim Petitioner remained exparte. Based upon the oral and documentary evidences, the Tribunal held that the deceased has contributed 50% negligence to the accident and as the rider of the vehicle is not having valid driving license ordered for pay and recovery and awarded a sum of Rs.5,50,000/- as compensation and hence the Appeal.

9.As per the statement of the rider viz., the first Respondent stated before the Police under Ex.P.1/FIR that his wife was trying to catch the 20 litres Can which fell down from the bike. Due to which she fell down and sustained injuries. As per the FIR, there was no negligence on the part of the rider of the motor cycle. Since she is no more, the husband in order to facilitate his daughters to get compensation from the Insurance Company chosen to remain exparte. Considering the entire facts and circumstances of this case, this Court is of the considered view that the rider was negligent in allowing the pillion rider to have a 20 litre Can with her. Similarly, the pillion rider was also negligent in trying to take the Can which was fell down from the moving bike.

10.Admittedly, the 1st Respondent's vehicle was insured with the 2nd Respondent. Legally the husband and wife are separate entities. Wife is a third party. As far as the motor vehicle claim is concerned, for the injury or death of the third party the insurance company is statutorily liable. No doubt, in this case there is a violation of the policy condition, namely absence of driving licence. Though the claim Petitioners happens to be the children of the 1st Respondent, the claim Petitioners are not able to produce the driving licence. RW1 was examined on the side of the second respondent and he categorically stated that there was no driving licence for the 1st respondent. Notice given to the 1st respondent was marked as Ex.R2. It has also been returned under Ex.R3. Considering the relationship of the claim Petitioners and the 1st Respondent and non-appearance of the 1st Respondent before this court, I have no hesitation to hold that he had no driving licence. Hence I held that contributory negligence on the part of the deceased is fixed at 25% and accordingly, 50% contributory negligence fixed by the Tribunal is hereby reduced to 25%.

11.The decision made by this Court in CMA 782/2008 Dated 15.10.2012 between the United India Insurance Company Ltd., Vs. Durai Samson and others is squarely applied to the facts of the present case. Hence the pay and recovery ordered by the Tribunal is just and fair and does not require any interference.

12.On the point of quantum of compensation, as per Ex.P.2/Postmortem Certificate, the age of the deceased was 35. No documentary evidence has been filed to prove the age of the deceased. In the petition her age has been given as 36. In Ex.P.3/Death Certificate her age has been given as 35. The age of the claim Petitioners are 16 and 14 respectively in the year 2015. Considering all those circumstances, this Court finds the age of the deceased is between 36-40. As per the judgment of the Honourable Supreme Court in ***Sarla Verma & Others .Vs. Delhi Transport Corporation & another,*** reported in ***2009 (2) TNMAC 1 (SC),*** multiplier '15' is rightly applied by the Tribunal. 1/3rd deduction was adopted by the Tribunal and 25% addition towards future prospects as per the Constitution Bench's judgment of the Honourable Apex Court in ***National Insurance Company Limited V. Pranay Sethi and others,*** reported in ***2017 (2) TN MAC 609 (SC),*** are just and proper and the same are hereby confirmed. The Tribunal fixed the notional income at Rs.6,500/- per month. The same is enhanced to Rs.9,000/- per month. Hence, the pecuniary loss sustained by the claim Petitioners are re-assessed as follows:

[Rs.9,000/- + (25% of 9,000/-)] x 2/3 x 12 x 15 = Rs.13,50,000/-

13.The claim Petitioners are entitled for Rs.75,000/- each towards loss of love and affection. A sum of Rs.15,000/- is awarded towards loss of estate, a sum of Rs.15,000/- is awarded towards funeral expenses and a sum of Rs.15,000/- is awarded towards transportation charges.

S.No.	*Head*	*Amount (Rs.)*
1	Pecuniary loss	1350000
2	Loss Love and affection	150000
3	Funeral expenses	15000
4	Loss of Estate	15000
5	Transportation	15000
	Total Compensation	1545000
	After deducting 25% towards contributory negligence	1158750

In total, the claim Petitioners are entitled to a sum of Rs.11,58,750/- (Rupees eleven lakh fifty eight thousand seven hundred and fifty only) and the interest awarded by the Tribunal at the rate of 7.5% per annum is also confirmed.

14.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the compensation from Rs.5,50,000/- to Rs.11,58,750/- to the extent indicated above. No Costs.

(ii) the Insurance Company is directed to deposit the enhanced award amount, with interest and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order and recover the same from the owner of the vehicle.

(iii) on such deposit being made, all the claim Petitioners/Appellants are entitled to get their share in the enhanced award amount, as per the ratio of apportionment made by the Tribunal.

(iv) the first claim Petitioner /Appellant 1 is permitted to withdraw her entire share with proportionate interest and costs, less the award amount already withdrawn, if any, by filing necessary application before the Tribunal. The second claim Petitioner/second Appellant is a minor. She is entitled to get her share in the enhanced award amount, as per the ratio of apportionment made by the Tribunal. The same shall be kept in a interest bearing fixed deposit in any one of the nationalised bank, till she attains majority. The guardian of minor is permitted to withdraw the interest from the deposit of the minor's share once in three months.

(v) the claim Petitioners are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

19.01.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To
The Chief Judge,
Court of Small Causes

Chennai.