



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2024

CORAM:

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

C.M.A.Nos.1164 of 2023, 274 and 490 of 2024

and

C.M.P.Nos.11243 of 2023, 3021 and 4980 of 2024

The Divisional Manager,
New India Assurance Co. Ltd.,
No.161-A, Kizhakku Velistreet,
Madurai.

... Appellant in all the CMAs

Vs.

1.Latha

2.Abdul Rahuman

... Respondents in all the CMAs

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the awards dated 18th day of November 2021 made in MCOP.No.192 of 2013 on the file of the Additional Motor Accident Claims Tribunal at Puducherry, 14th day of December 2021 made in MCOP.No.223 of 2013 on the file of the Additional Motor Accident Claims Tribunal at Puducherry and 18th day of November 2021 made in MCOP.No.193 of 2013 on the file of the Additional Motor Accident Claims Tribunal (Additional Judge) at Puducherry.



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For Appellant : Mr.C.Ramesh Babu in all the CMAs

For Respondents : Mr.Prakash Adiapadam for R1 in all the CMAs

COMMON JUDGMENT

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

All these three appeals arise out of the same accident which occurred on 04.11.2012.

2. According to the claimant, when the deceased Vijayakumar was riding his two-wheeler bearing Reg.No.PY-01-AG-3903 with his wife and minor child Pooja Sri, aged 8 years on the Tindivanam – Villupuram by-pass road, a lorry belonging to the 2nd respondent bearing Reg.No.TN-31-AE-3850 driven by its driver in a rash and negligent manner dashed against the two-wheeler. As a result of the impact, both the rider Vijayakumar and the minor child Pooja Sri sustained grievous injuries and died on the spot. The wife of the rider Latha survived with grievous injuries. Attributing negligence on the part of the lorry as the cause of the accident, the claimant sought for compensation.



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3. Three independent claim petitions were filed. In MCOP.No.193 of 2013 subject matter of CMA.No.490 of 2024, the claimant sought for a compensation of Rs.58,25,000/-. The quantum was sought to be justified by contending that the deceased was running a hardware shop at Maduruntakam and was earning Rs.40,000/- per month. In view of the untimely loss, the wife who is also injured cannot also carry on the business, resulting in loss of the entire income to the family.

4. As far as the minor child is concerned, the claimant sought for a compensation of Rs.39,90,000/- in MCOP.No.192 of 2013 covered in CMA.No.1164 of 2023.

5. The third claim petition was filed in MCOP.No.223 of 2013 by the wife of the deceased Vijayakumar viz., Latha seeking a compensation of Rs.40,03,000/- for the injuries sustained by her. This subject matter of CMA274 of 2024.

6. In all the claim petitions while the claimant let in evidence, the



Insurance Company did not let in any evidence.

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7. The Tribunal assessed the compensation in respect of the deceased Vijayakumar at Rs.17,57,000/- and after deducting 15% towards contributory negligence, since it was found that Vijayakumar was travelling without helmet, the amount payable by the Insurance Company was fixed at Rs.14,94,000/-.

8. As regards the minor daughter was concerned, the Tribunal assessed the compensation payable to her at Rs.11,57,000/-. The Tribunal also deducted 15% towards contributory negligence since it was found that the 8 years old minor child was not wearing a helmet. Having deducted 15%, the amount payable by the Insurance Company was arrived at Rs.9,84,000/-.

9. In so far as the injuries sustained by the claimant in MCOP.No.223 of 2013 viz., Latha who is the wife of the rider Vijayakumar is concerned, the Tribunal found that she had suffered a disability of 85%. Since there was an amputation of left leg just below the hip. The Tribunal applied the



multiplier method and arrived at the compensation of Rs.40,03,000/- payable by the Insurance Company. The Tribunal did not deduct any amount for contributory negligence for the injured claimant. Aggrieved the Insurance Company has come up with these appeals.

10. We have heard Mr.C.Ramesh Babu, learned counsel appearing for the Insurance Company.

11. Mr.C.Ramesh Babu, learned counsel appearing for the Insurance Company is unable to challenge the quantum of compensation very effectively, since the award passed by the Tribunal in respect of the death of Vijayakumar as well as minor daughter Pooja Sri is very reasonable. Even insofar as the injury case is concerned, the Tribunal having found that the disability is 85% has rightly applied the multiplier method and arrived at the compensation.

12. The other major grievance of the learned counsel for the Insurance Company is that the deductions made on the ground of contributory negligence is not uniform, while the Tribunal has deducted



15% towards contributory negligence in the case of the rider of the vehicle and the minor daughter, it has not chosen to deduct any amount for the injured claimant, since she was also not wearing helmet.

13. The learned counsel would also contend that the Tribunal erred in applying the multiplier of '18' in the case of the minor child. He had relied upon the judgment of the Hon'ble Supreme Court in ***Kishan Gopal and Another Vs. Lala and others*** in ***Civil Appeal No.7137 of 2013***, wherein, the Hon'ble Supreme Court has held that the multiplier of '15' would be fair and reasonable.

14. The said judgment of the Hon'ble Supreme Court is dated 26th August 2013. The Tribunal has relied upon the judgment of the Hon'ble Supreme Court in ***Kajal Vs. Jagdish Chand and others*** in ***Civil Appeal No.735 of 2020***, which is more recent in support of its conclusion that '18' would be appropriate multiplier. Since the Tribunal has followed a very recent judgment of the Hon'ble Supreme Court, we do not propose to interfere with the award on that ground.



15. However, deduction of 15% for contributory negligence is concerned, we find that the reasoning of the Tribunal that the 8 years old minor could be said to have contributed to the accident by not wearing the helmet is not acceptable. No doubt, there was some negligence on the part of the rider of the vehicle in not wearing the helmet. The pillion riders, though are supposed to wear helmet, normally it does not happen, that too, when children of tender age are travelling with the parents in two-wheeler they seldom wear helmet. Though it would be advisable for them to wear helmet, they cannot be said to have contributed to the accident by not wearing the helmet. The Tribunal has not taken into account the fact that the child was just 8 years old and she cannot be expected to be matured enough to wear helmet and travel along with the parents. Hence, we find that the deduction of 15% on contributory negligence, particularly in the case of the minor child cannot be justified. We therefore modify the award in MCOP.No.192 of 2013 alone and direct that entire compensation of Rs.11,57,000/- to be paid by the Insurance Company.

16. It is stated that the entire award amount has been deposited.



17. We are alive to the fact that the claimant has not challenged the award. However, it is the duty of the Tribunal and this Court to award just compensation in the motor accident claims cases. Hence, while dismissing the appeals, we modify the award in MCOP.No.192 of 2013 as indicated above. All the appeals stand **dismissed** with the above modification. The direction of the Tribunal regarding interest for the default period is confirmed. No costs. Consequently, the connected miscellaneous petitions are closed.

(R.S.M., J.) (R.S.V., J.)
05.03.2024

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Index : No

Internet : Yes

Neutral Citation : No

Speaking order

To
The Additional Judge,
Additional Motor Accident Claims Tribunal,
Puducherry.



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R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

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