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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.3014 of 2023

1.Palanisamy

2.Saroja

... Appellants

.vs.

1.Madheswaran

2.New India Assurance Co., Ltd.,
12, New Hospital Road,
Gobi Town and Taluk,
Erode District.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and Decree dated 03.12.2021 made in MCOP No.50 of 2019 on the file of MACT/IV Additional District Court, Bhavani at Erode.

For Appellants : Mr.Ma.P.Thangavel

For Respondents : Mr.J.Michale Visuvasan for R2



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JUDGMENT

The claimants not being satisfied with the quantum of compensation awarded by the Tribunal in MCOP No.50 of 2019, dated 03.12.2021, has filed this appeal seeking for enhancement of compensation.

2.The case of the claimants is that their son Parthiban was riding a two wheeler on 26.11.2018 at Perunthalaipur road and at about 8 p.m., when the vehicle was going near the bus depot, the offending vehicle which was an Ashok Leyland Lorry was driven in a rash and negligent manner and it came from behind and hit the two wheeler. As a result of the accident, the claimant was thrown away from the vehicle and he sustained grievous head injury and he died in the accident. An FIR came to be registered against the driver of the offending vehicle. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. However, the Tribunal found that the



deceased was not having a valid driving license and he was also not wearing the head gear. Therefore, the Tribunal proceeded to fix 35% contributory negligence against the deceased.

4.The Tribunal thereafter fixed the total compensation at Rs.16,49,500/- under various heads as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Dependency	15,12,000
2.	Filial Consortium (Rs.50,000 x 2)	1,00,000
3.	Loss of Estate, Funeral Expenses	30,000
4.	Transportation	7,500
	Total	16,49,500

5.Out of the above compensation, the respondents were directed to pay a sum of Rs.10,72,175/- (65%) with interest at the rate of 7.5% per annum.

6.The claimants not being satisfied with the quantum of compensation and also the Tribunal attributing 35% contributory negligence against the deceased, have filed this appeal before this Court.



7. Heard Mr.Ma.P.Thangavel, learned counsel appearing on behalf of the appellants and Mr.J.Michael Visuvasam, learned counsel appearing on behalf of the 2nd respondent.

8.This Court has carefully considered the submissions made on either side and also the materials available on record.

9.The first issue to be gone into is with regard to the Tribunal attributing 35% contributory negligence against the deceased. The Tribunal on appreciation of evidence came to a categoric conclusion that the accident had taken place only due to rash and negligent driving on the part of the driver of the offending vehicle. It must be borne in mind that the offending vehicle was coming in the same direction and it had hit the two wheeler from behind. Having rendered such a finding, the Tribunal attributed 35% contributory negligence on the ground that the deceased did not have a valid driving license and he was not wearing a helmet. It is now too well settled that contributory negligence cannot be attributed without their being any materials to show that the injured/deceased had actually contributed to the accident. The mere non-possession of a driving license or not wearing a helmet, by itself will not raise an assumption that there was negligence on the part of the deceased. Hence, this Court holds that the



35% contributory negligence attributed against the deceased cannot be sustained and the same is hereby set aside.

10.The next issue is with regard to the notional monthly income that was fixed by the Tribunal. The Tribunal found that the deceased was aged about 18 years and he was studying B.E., II year in a private engineering college. Considering the fact that the accident had taken place in the year 2018, the Tribunal fixed the notional monthly income at Rs.10,000/-.

11.In the considered view of this Court, the parents lost their only son who was studying engineering course. The accident had taken place in the year 2018 and therefore, this Court is inclined to fix the notional monthly income at Rs.15,000/- per month. Considering the age of the deceased, 40% can be added toward future prospects. Thus, the compensation under the head of loss of dependency/income is calculated as follows:

$$\text{Rs.21,000} \times 12 \times 18 \times 1/2 = \text{Rs.22,68,000/-}$$

12.The compensation that has been fixed under the head of loss of love and affection is reduced to Rs.80,000/- (Rs.40,000/- x 2).



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13. The compensation that has been fixed under the other heads are reasonable and does not require the interference of this Court.

14. In the light of the above discussion, the compensation awarded by the tribunal is modified as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Dependency	22,68,000
2.	Filial Consortium (Rs.40,000 x 2)	80,000
3.	Loss of Estate, Funeral Expenses	30,000
4.	Transportation	7,500
	Total	23,85,500

15. The compensation awarded by the tribunal at Rs.16,49,500/- is enhanced to Rs.23,85,500/-. The second respondent insurance company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the claimants. The other directions issued by the



Tribunal with regard to the mode of payment of compensation remains unaltered.

16. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

30.07.2024

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

To

The MACT/IV Additional District Court, Bhavani at Erode.



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N. ANAND VENKATESH., J

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