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C.M.A.No.2522 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.2522 of 2023

1.K.Nirmala W/o R.Kirubakaran

2.R.Kirubakaran S/o C.K.Raju

... Appellants

Vs

1.K.G.Kanniappan [1st respondent remained *ex-parte*]

2.United India Insurance Company Limited,

Motor Third Party Hubb,

4th Floor, Silinghi Buildings,

134, Greams Road, Thousand Lights,

Chennai – 600 006.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.04.2022 made in MACT.O.P.No.8122 of 2018, on the file of the II Small Causes Court, (Motor Accidents Claims Tribunal) Chennai.

For Appellants	: Mr.M.Mahendran for Mr.R.Kalai Arasan
For R1	: Dispensed with
For R2	: Ms.R.Vijayakamala



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JUDGMENT

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2. The accident was occurred on 15.07.2018. At that time, the deceased was 21 years and an B.B.A. Graduate. The eye witness P.W.1 deposed that the accident was occurred only due to rash and negligence driving on the part of the driver of the lorry. Therefore, the Tribunal confirmed that the accident was occurred only due to the rash and negligent driving on the part of the driver of the lorry bearing Registration No.TN-22-CQ-4378. It was an admitted fact that at the time of driving the two wheeler, the deceased rider of the two wheeler was not wearing the helmet. Non-wearing of the helmet is not the cause for the accident. Only the rash and negligent driving on the part of the driver of the lorry was the cause for the accident. That was the finding of the Tribunal also. But the Tribunal had taken it as if non-wearing of the helmet would be a cause for the accident and fixed 10% towards contributory negligence against the deceased. Hence, the said finding of the Tribunal is liable to be set aside. Therefore, fixation of 10% towards contributory negligence by the Tribunal on the part of the deceased alone is set aside and this Court is inclined to fix the entire liability on the part of the 2nd



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respondent/Insurance Company, with which the offending vehicle was insured.

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3. As far as the quantum of compensation is concerned, the Tribunal has awarded the compensation under the following heads:

1. Loss of dependency	Rs.15,28,481/-
2. Loss of Estate	Rs.15,000/-
3. Loss of Love and affection	Rs. 44,000/-
4. Funeral expenses	Rs.16,500/-
	TotalRs.16,03,981/-
Less:10% contributory negligence fixed on the deceased	Rs.1,60,398.10
	Rs.14,43,582.90
Rounded off	Rs.14,43,600/-

4. The Learned Counsel for the appellants would submit that the Tribunal has taken the income of the deceased as Rs.10,200/- p.m. based on payslip which was marked as Ex.P11. However, he would further submit that other than Rs.10,200/-, the deceased person used to get an incentives as well. But in order to prove the same, the learned Counsel has not produced any evidence either before the Tribunal or before this Court.

5. Under these circumstances, the Tribunal has rightly fixed the income of the deceased as Rs.10,200/-. Therefore, I do not find any infirmity on the



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aspect of fixation of monthly income of the deceased as Rs.10,200/- and the same is confirmed.

6. As far as the compensation awarded by the Tribunal under the head 'loss of love and affection' at Rs.44,000/- is concerned, this Court is of the view that the parents are entitled to Rs.40,000/- each. Hence, Rs.44,000/- stands increased to Rs.80,000/-. Accordingly, the award of compensation is detailed as follows:

1.	Loss of dependency	Rs.15,28,481/-
2.	Loss of Estate	Rs.15,000/-
3.	Loss of Love and affection	Rs.80,000/-
4.	Funeral Expenses	Rs.16,500/-
	Total amount of compensation	Rs.16,39,981/- [Enhanced by Rs.1,96,381/-]

In the result, the Civil Miscellaneous Appeal stands partly allowed and the compensation awarded by the Tribunal at Rs.14,43,600/- is hereby enhanced to Rs.16,39,981/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/insurance company is directed to deposit a sum of Rs.16,39,981/- after deducting the amount already deposited, if any, within a period of 6 weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.8122 of 2018 on the file of the II Small



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Causes Court (Motor Accidents Claims Tribunal), Chennai. Upon such deposit,

the Court below is directed to transfer the entire amount to the bank account of the claimants by way of RTGS within a period of three weeks thereafter as proportioned by the Tribunal. No costs.

19.01.2024

veda

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

To:

The Motor Accidents Claims Tribunal/
II Small Causes Court,
Chennai.



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KRISHNAN RAMASAMY,J.

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