IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 04.04.2024

CORAM

THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

C.M.A.No.1025 of 2020

1.Velumani
2.Velusamy .. Appellants

Vs

1.Nagaraj

2.Balu Soc,
Rep. By its authorised person,
Perur, Coimbatore – 641010.

3.Tata AIG General Insurance Company Limited,
1st floor, May Flower Building,
ATT Colony,
Coimbatore – 18. .. Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.04.2019, made in M.C.O.P.No.954 of 2015, on the file of the Motor Accident Claims Tribunal, 1st Additional District Judge, Tiruppur.

For Appellants	: Mr.K.Myilsamy
For R1 & R2	: No Appearance
For R3	: Mr.K.Vinod

JUDGMENT

The appellants, who are the claimants, have filed this appeal challenging the impugned award on the ground that the Tribunal has erroneously fixed the contributory negligence on the part of the deceased. They also claim that the quantum of compensation awarded by the Tribunal is low.

2. The accident had happened on 27.03.2015 and at that time, the deceased was a minor. The victim was riding a two-wheeler. The third respondent Insurance Company is the insurer for Benz Car driven by the first respondent, which dashed against the two-wheeler causing death of the minor.

3. Admittedly, the deceased minor was not holding valid driving license and he was also not wearing a helmet. Necessarily, in view of the said fact, contributory negligence has to be fixed on the deceased minor as well. The Tribunal has fixed contributory negligence of the minor at 50%, which, in the considered view of the Court, is on the higher side. Eventhough he did not possess valid driving license and was not wearing

a helmet at the time of the accident, the Tribunal ought not to have fixed contributory negligence on the part of the deceased minor at 50%.

4. This Court, after giving due consideration to the fact that Benz Car insured with the third respondent was the cause for the accident as seen from the FIR, and considering the fact that at the time of the accident, the deceased minor was aged about 17 years, reduces the contributory negligence of the minor from 50% to 30%.

5. The notional annual income of the deceased was fixed by the Tribunal at Rs.15,000/- per annum, which, in the considered view of the Court, is too low. Since the accident happened in the year 2015, this Court fixes the notional annual income of the deceased minor at Rs.72,000/- per annum, calculated at Rs.6,000/- per month.

6. The Tribunal, under the impugned award, has directed the third respondent Insurance Company to pay the appellant compensation of Rs.2,89,000/- as detailed hereunder:-

Loss of income	-- Rs.1,89,000/-
Loss of consortium	-- Rs.80,000/-
Funeral expenses	-- Rs.15,000/-
Transport expenses	-- Rs.5,000/-
Total	**-- Rs.2,89,000/-**

7. In view of enhancement of notional annual income of the minor victim from Rs.15,000/- p.a. to Rs.72,000/- p.a. by this Court, loss of income payable to the appellants by the third respondent is enhanced from Rs.1,89,000/- to Rs.9,07,200/- as detailed hereunder:-

Monthly income	-- Rs.6,000/-
40% of future prospects	-- Rs.2,400/-
Total	-- Rs.8,400/-
(-) 50% towards personal expenses	-- Rs.4,200/-
Loss of income - 4200 x 12 x 18	-- Rs.9,07,200/-

8. This Court is also of the considered view that since the minor died on the spot as a result of the accident, the question of payment of transport expenses will not arise and hence, Rs.5,000/- awarded by the Tribunal towards transport expenses is set aside. However, the Tribunal has erroneously not awarded any compensation towards loss of estate. This Court, therefore, awards compensation of Rs.15,000/- to the

claimants/appellants towards loss of estate.

9. Insofar as the compensation awarded by the Tribunal towards loss of consortium and funeral expenses are concerned, there is no scope for enhancement, as the said compensation awarded by the Tribunal is just and reasonable one.

10. For the foregoing reasons, the compensation payable to the claimants/appellants by the third respondent Insurance Company is re-worked in the following manner:-

Loss of income	-- Rs.9,07,200/-
Loss of consortium	-- Rs.80,000/-
Funeral expenses	-- Rs.15,000/-
Loss of estate	-- Rs.15,000/-
Total	**-- Rs.10,17,200/-**
(-) 30% contributory negligence	-- Rs.3,05,160/-
Total compensation	**-- Rs.7,12,040/-**

11. In the result, the impugned award passed by the Tribunal is modified to the extent mentioned above and the Civil Miscellaneous Appeal is disposed of. The third respondent Insurance company is

directed to deposit the entire award amount of Rs.7,12,040/- to the credit of M.C.O.P.No.954 of 2015 on the file of Motor Accident Claims Tribunal, 1st Additional District Court, Tiruppur, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. The appellants are also entitled for interest at 7.5% per annum from the date of claim petition till the date of realization. On such deposit, the Tribunal is directed to transfer the entire award amount along with accrued interest therein through RTGS/NEFT transfer to the bank account of the appellants. The appellants are directed to pay additional court fees for the differential amount within a period of two weeks from the date of receipt of a copy of this judgment. No Costs.

04.04.2024

Index: yes/no
Neutral citation: yes/no
speaking/non-speaking
rkm

To

1. 1st Additional District Judge,
   (Motor Accident Claims Tribunal)
   Tiruppur.

ABDUL QUDDHOSE,J.

rkm

C.M.A. No.1025 of 2020

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