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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.733 of 2024

1.Jayanthi

2.Murugan

..Appellants

.VS.

1.C.Baskaran

2.M/s.New India Assurance Co. Ltd.,
Having Divisional Office at TP Hub,
Sedhu Krishna Trade Centre,
No.133/31-A, Trichy Main Road,
Gugai, Salem 636 006

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and Decree in MCOP No.2182 of 2019 dated 16.02.2021 on the file of the Motor Accidents Claims Tribunal, Special District Judge, MCOP Tribunal, Salem.

For Appellants : Mr.R.Navaneetha Krishnan

For Respondents : Ms.R.Sreevidhya for R2



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JUDGMENT

This civil miscellaneous appeal has been filed by the claimants seeking for enhancement of compensation.

2.The claimants are the parents of the deceased. On 06.10.2019 at about 8 p.m., the deceased was riding two wheeler along with the pillion rider in Salem-Dharmapuri Main Road. Near Samathuvapuram, the offending vehicle which is the JCB was going in front of the two wheeler and it made a sudden turn to its right resulting in the two wheeler driven by the deceased hit on the right side of the offending vehicle causing serious injuries to both the deceased as well as the pillion rider. Unfortunately, both of them died in this accident.

3.The parents of the deceased filed a claim petition before the Tribunal by claiming for compensation to the tune of Rs.50 Lakhs. The Tribunal on considering the facts and circumstances of the case and also after appreciating the evidence available/oral and documentary, came to a conclusion that the negligence was on the part of the JCB driver which resulted in the accident,



but however, fixed the contributory negligence on the part of the deceased at 15%, since the deceased was not wearing the helmet at the time of accident.

The Tribunal fixed the total compensation at Rs.13,15,200/- (Rupees Thirteen Lakhs Fifteen Thousand and Two Hundred only) in the following manner:

Compensation awarded under the head	Amount (in Rs.)
Loss of Dependency	12,85,200.00
Loss of Estate	15,000.00
Funeral Expenses	15,000.00
Total	13,15,200.00

4. Aggrieved by the compensation fixed by the Tribunal, the claimants have filed present appeal before this Court.

5. Heard Mr.R.Navaneetha Krishanan, learned counsel appearing on behalf of the appellants and Ms.R.Sreevidhya, learned counsel appearing on behalf of the 2nd respondent.

6. The learned counsel for the appellants primarily raised three grounds while seeking for enhancement of compensation.



7.The first ground that was raised by the learned counsel for the appellants is that the Tribunal after coming to a conclusion that the negligence was only on the part of the offending vehicle, ought not to have deducted 15% towards contributory negligence only on the ground that the petitioner was not wearing the helmet. The second ground that was raised by the learned counsel for the appellants is that the Tribunal after having found that the deceased is an Engineer by profession by relying upon Ex.P6, fixed the monthly income at Rs.10,000/- when the appellants were able to substantiate that the deceased was earning a sum of Rs.25,000/- per month. The third ground that was raised by the learned counsel for the appellants is that the Tribunal did not fix any compensation towards loss of love and affection for the parents who had lost their only son.

8.Per contra, the learned counsel for the Insurance Company submitted that the Tribunal had considered the entire materials on record and rightly fixed the compensation. The learned counsel submitted that the appellants were not able to substantiate the income of the deceased and the Tribunal found that both Ex.P7 and Ex.P8 were created documents which do not establish the income of the deceased. The learned counsel further submitted



that the deceased was not wearing the helmet at the time of accident and therefore, the Tribunal had rightly fixed the contributory negligence on the part of the deceased at 15%. It was therefore contended that the Award passed by the Tribunal does not warrant any interference of this Court.

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

10.Insofar as the first issue that was raised by the learned counsel for the appellants is concerned it pertains to the negligence on the part of the vehicle which caused the accident. The Tribunal after considering Ex.P1 which is the FIR and also Ex.P18 which is the rough sketch, came to a conclusion that the accident had taken place only due to the offending vehicle viz., the JCB. The Tribunal after having rendered such a finding, deducted 15% towards contributory negligence on the ground that the deceased was not wearing a helmet at the time of the accident. Considering the facts and circumstances of the case, this Court wants to reduce the contributory negligence to 5% and accordingly, the total contributory negligence that was attributed against the deceased 15% by the Tribunal is reduced to 5%.



11.The next issue pertains to the income of the deceased. Ex.P6 clearly shows that the deceased had completed Engineering. He was also working in a private company. Considering the qualification of the deceased and his age, a sum of Rs.10,000/- which was fixed as the monthly income is at a lower side. Hence, this Court is inclined to increase the monthly income to Rs.15,000/- Accordingly, the monthly income fixed by the Tribunal at Rs.10,000/- is enhanced to Rs.15,000/-

12.The third issue pertains to the non-grant of compensation under the head 'loss of love and affection'. In the instant case, admittedly, the parents have lost their son at a very crucial age and thereby, they are entitled to be paid compensation under the head 'love and affection'. The Tribunal did not fixed any amount under this head. Hence, this Court is inclined to fix a sum of Rs.40,000/- for each of the parent towards the head of love and affection.

13.In the light of the above discussion, this Court is inclined to fix the compensation in the following manner:

Loss of dependency: The monthly income is fixed at Rs.15,000/- towards future prospects at the rate of 40%, which is fixed at Rs.6,000/-. Out of



this amount 50% shall be deducted towards personal and living expenses of the deceased. The 18 multiplier is applied. While applying this multiplier, it comes to Rs.10,500 x 12 x 18 which is equal to Rs.22,68,000/- (Rupees Twenty Two Lakhs and Sixty Eight Thousand only). The compensation towards love and affection comes to Rs.80,000/- (Rs.40,000 x 2). Insofar as loss of estate and funeral expenses, the compensation fixed by the Tribunal is sustained. Thus, the total compensation that is awarded to the appellants shall be:

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Dependency	22,68,000/-
2.	Loss of love and affection	80,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	23,78,000/-

14.Out of the above amount, 5% is deducted towards contributory negligence and hence, the claimants are entitled for a compensation of Rs.22,59,100/- This compensation shall be paid with interest at the rate of 7.5% per month from the date of the petition till the date of realization, which shall exclude the delay of 501 days in filing this appeal and shall also take



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N. ANAND VENKATESH., J

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into consideration the date of the deposit of the compensation amount by the 2nd respondent already deposited in line with the Award passed by the Tribunal. All the other conditions imposed by the Tribunal shall stand as it is, except for the modification of the compensation amount as stated *supra*.

15. In the result, this civil miscellaneous appeal is allowed in the above terms. No Costs.

01.04.2024

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

The Motor Accidents Claims Tribunal,
Special District Judge, MCOP Tribunal, Salem.

CMA No.733 of 2024