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C.M.A.(MD)No.293 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 26.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.293 of 2022

and

C.M.P(MD)No.6686 of 2022

The Oriental Insurance Company Limited
through its Branch Manager,
Kamatchiamman Complex 2nd Floor,
Opposite to Kamatchiamman Kovil,
Dindigul Road, Ottanchatram Town,
Ottanchatram Taluk,
Dindigul District.

... Appellant/Respondent No.3

Vs.

1.Mahalakshmi
2.Minor.Alaguranjani
3.Minor.Matheshkumar
4.Minor.Mathavi
5.Selvi

... Respondent Nos.1 to 5/
Petitioners

6.Kuppusamy
7.Karuppusamy

... 6th & 7th Respondents/
1st & 2nd Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No. 27 of 2017, dated 22.03.2021 on the file of the Motor Accident Claims Tribunal-cum-Sub Court, Veda sandur.



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For Appellant : Mr.C.Jawahar Ravindran
For R1 to R5 : Mr.R.Muthu Vijaya Pandian
For R6 & R7 : Given up

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the judgment and decree dated 22.03.2021 passed in M.C.O.P.No.27 of 2017 by the Motor Accident Claims Tribunal-cum-Subordinate Judge, Veda sandur.

2. The third respondent/Oriental Insurance Company in M.C.O.P.No. 27 of 2017 is the appellant herein.

3. The respondents 1 to 5, who are dependents of the deceased Alal guraja, filed the claim petition in M.C.O.P.No.27 of 2017.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No.27 of 2017 is adopted hereunder.

5. The brief facts of the case:

On 23.01.2017 the deceased Alaguraja and one Ajithkumar were riding as pillion riders in a two wheeler Hero Splendor for registration, which was ridden by its rider Sivasamy along the Veda sandur to Eriyodu



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road from west to east. While riding near Varapatti diversion, a TATA Motors Maxi Cab bearing registration No.TN 57 AP 4420, belonging to the second respondent, driven by its driver/1st respondent in a rash and negligent manner from opposite side and dashed against the two wheeler. Due to the impact the pillion rider Alaguraja sustained fatal injuries and died. A case was registered in Crime No.14 of 2017 by the Eriyodu police station. At the time of death, the deceased was doing coolie work. The first petitioner is the wife of the deceased Alaguraja, petitioners 2 to 4 are children and 5th petitioner is the mother of the deceased Alaguraja. The petitioners are depending on the income of the deceased Alaguraja. The vehicle of the second respondent was insured with the third respondent. Hence, the petitioners 1 to 5 filed the claim petition seeking compensation of Rs.30,00,000/-.

6. The respondents 1 to 3/driver, owner and Insurance Company of the TATA Maxi cab TN 57 AP 4420 objected the claim petition by contending that at the time of accident, two pillion riders were travelling along with rider. The rider was not having driving licence. Both the rider and the said two pillion riders were under the influence of liquor. The accident took place due to rash and negligent driving of the rider of the two wheeler. Further, the rider and the pillion riders had not worn helmet and



violated the policy conditions. The two wheeler was a new one and it was ridden without registration number. Hence, the petitioners are not entitled to compensation.

7. Before the Tribunal, the petitioners side adduced oral and documentary evidence and the respondents have not adduced any oral or documentary evidence. After hearing both and after considering the evidences, the Tribunal has passed order and awarded a total compensation of Rs.17,69,200/- with interest. Aggrieved by the said award, the appellant/Insurance Company has preferred this Civil Miscellaneous Appeal.

8. Heard both side and perusal the records in this Civil Miscellaneous Appeal.

9. The learned counsel appearing for the appellant/3rd respondent Insurance Company has mainly argued that at the time of accident the rider of the two wheeler had no valid driving licence and the rider and pillion riders had not worn helmets. These facts were admitted by the claimants themselves. The counsel for the appellant/3rd respondent has further argued that in the same accident another pillion rider Ajithkumar sustained injuries, who filed the claim petition in M.C.O.P.No.676 of 2017. The said claim



petition was tried by the Tribunal, which came to the conclusion that there was also contributory negligence on the part of riders in the two wheeler and fixed at 25% contributory negligence on the part of riders, as three persons travelled in two wheeler which is against policy condition. The learned counsel has further submitted that this Court held in various cases that if the rider of two wheeler is not having valid driving licence then 50% contributory negligence has to be fixed and the same is applicable to the pillion riders also. The learned counsel further submitted that this Court has already held in various cases fixed contributory negligence from 10% to 50% towards rider/driver who was not possessing driving licence at the time of accident, but the appellant/3rd respondent Insurance Company seeks only 25% contributory negligence in this case. In support of his argument, the learned counsel for the appellant/3rd respondent has relied on the following citations:

1. **2021(2) TN MAC 503 (TNSTC, Pudukottai vs. Marimuthu & Anr.)**, wherein it is held in paragraph Nos.20 and 23 as follows:

“20. No doubt, as already pointed out, taking more than 2 persons in a two-wheeler, by itself is an offence, but whether it would amount to negligence or not is required to be decided on the facts and circumstances of the given case.....But, if the rider takes 2 or 3 grown-up persons or obese persons, that by itself would amount to negligent driving since the



rider can loose his control of the vehicle at any point of time. In this case on hand, since four grown-up students had travelled in the two wheeler, I have no hesitation to hold that the rider and all the pillion riders are guilty of negligent riding/travelling.

23.....Considering the above, this Court is of the clear view that not only the two-wheeler rider but all the pillion riders are also liable for contributory negligence. Considering the entire facts and circumstances, this Court is also of the view that the degree of contributory negligence can be fixed at 50% on the part of the deceased and is fixed accordingly.”

2. **2021(2) TN MAC 627**, wherein it is held in paragraph No.15 as follows:

“15....In the present case, the accident has occurred due to head on collision in the Highways in the middle of the road and admittedly three persons travelled in the two wheeler at the time of accident. Therefore, the ratio laid down in the judgment of the Hon’ble Apex Court referred to above does not advance the case of the 1st respondent in all the appeals. Considering the entire materials on record, it will be just and equitable, if 30% contributory negligence is fixed on the part of the 1st respondent in all the three appeals.”



3. **2020 (1) TN MAC 319 (DB)**, wherein it is held in paragraph No.8

as follows:

“8. On the question of liability, we find some force in the submission made by the learned counsel for the appellant. Records perused would show that the accident has occurred when the two-wheeler dashed against the stationed vehicle. Further more, Ex.R.6 indicates non-possessing of the licence by the deceased apart from not wearing helmet. We may note that there are other evidence to show that the negligence was substantially on the part of the vehicle insured with the appellant. Therefore, it should be the case of contributory negligence. In such view of the matter, we fix the negligence on the part of the deceased 20%.”

4. **2018 (2) TN MAC 302 (DB)**, wherein it is held in paragraph No.

18 as follows:

“18.It has become a routine that almost about 50% of the drivers drive the vehicles without any valid and effective driving licence and cause many accidents, resulting in loss of precious lives and injuries to many persons. Therefore, in an attempt to deprecate this kind of practice of driving vehicles without any valid and effective driving licence, 10% of the amount awarded towards compensation is deducted.”



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10. The learned counsel for the respondents 1 to 5/petitioners 1 to 5 (dependents of the deceased Alaguraja) has submitted that the deceased was travelling as pillion rider. Mere not wearing helmet will not amount to contributory negligence. Further, he argued that the non-holding driving licence of rider and riders travelled beyond permissible limits would not apply contributory negligence on the part of the pillion rider. In support of his argument the learned counsel for the petitioners/claimants has relied on the citation reported in **(2020) 3 Supreme Court Cases 57 (Mohammed Siddique & Anr. Vs. National Insurance Company Limited & Ors.)**, wherein it is held in paragraph Nos.12 and 13 as follows:

“12...Therefore, the finding of the High Court that two persons on the pillion of the motorcycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW3 to the effect that 2 persons on the pillion added to the imbalance.

13. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been guilty of contributory negligence. Hence, the reduction of 10% towards contributory



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negligence, is clearly unjustified and the same has to be set aside.”

11. On hearing both and on perusal of records, it is clear that at the time of accident three persons were travelling in the two wheeler/Hero Splendor. The deceased Alaguraja was riding as pillion rider along with another one pillion rider Ajithkumar. The rider of the two wheeler is Sivasamy. On perusal of records, it is clear that the claimant side witness P.W.2 has clearly admitted that the rider Sivasamy was riding the two wheeler and the rider was not possessing driving licence and all the rider and two pillion riders were not wearing helmet. Admission is the best evidence and there is no necessity for other materials. At this juncture the argument of the learned counsel for the petitioners/claimants is not acceptable one. Because, he placed argument that the rider and two pillion riders travelling in motor cycle would not amount for contributory negligence relying on the citation **(2020) 3 Supreme Court Cases 57**, in that case, the riders had driving licence and also wearing helmet. In this case the rider was not holding valid driving licence and also all the three were not wearing helmet. So, the citation is not applicable to the facts of this case. In the facts and circumstances of the case on hand, this Court is inclined to fix contributory negligence upon the pillion riders also.



12. On perusal of records, it is clear that the another pillion rider Ajithkumar filed the claim petition in M.C.O.P.No.676 of 2017 (original M.C.O.P.NO.743 of 2015) before the Tribunal wherein contributory negligence is fixed at 25% as the rider of the two wheeler had not possession of driving licence. It is not disputed by the petitioners/claimants side counsel. On perusal of citations relied on by the appellant/3rd respondent, this Court has already fixed contributory negligence from 10% to 50% of the nature of this case. But, the appellant/3rd respondent seeks only 25% contributory negligence as the same was fixed by the Tribunal in connected case of this accident. The petitioners/claimant side has not placed any contra material to show that the contributory negligence of 25% fixed over the pillion rider in the connected case filed upon the same accident was challenged or reduced by the appellate forum. Therefore, this Court is fixing 25% of contributory negligence on the part of the deceased in this case.

13. On hearing both and on perusal of records, both side agreed about the notional income and future prospects and deduction of 1/4 towards own expenses of the deceased, multiplier of the deceased by the Tribunal. On perusal of order of the Tribunal, it is clear that the age of the deceased was fixed at '25' and in the absence of any acceptable document in respect of income, based on the laid down principle as per **Sarala Varma case**,



notional income was fixed at Rs.6,500/- with 40% future prospects at Rs. 2,600/-, thereby totally at Rs.9,100/- p.m. As the deceased was married, towards personal expenses 1/4 amount was deducted from Rs.9,100/- and thereby arrived income for the dependents as Rs.14,74,200/- multiplier 18 was taken. The Tribunal awarded Rs.1,00,000/- towards consortium to the 1st petitioner/wife of the deceased and Rs.50,000/- each to the petitioners 2 to 4/children of deceased and Rs.25,000/- to the 5th petitioner/mother towards love and affection. Funeral expenses of Rs.20,000/- has been awarded by the Tribunal. As per dictum laid down by the Hon'ble Supreme Court in **Pranay Sethi case (2017 (2) TNMAC 609 (SC)**, each dependent of the deceased would be awarded Rs.40,000/- towards loss and love affection. Therefore, the first petitioner being the wife of the deceased is entitled to Rs.40,000/- towards loss of consortium and the petitioners 2 to 5 are also entitled to Rs.40,000/- each towards loss of love and affection. It is not disputed by the learned counsel for the respondents. It is not disputed by both side in respect of a sum of Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

14. Thus, this Court holds that the total compensation payable to the appellants/petitioners/claimants in M.C.O.P.No.27 of 2017 as follows:



Sl. No.	Description	Amount awarded by this Court
1.	Loss of Income (Rs.9,100/- x 1/4 x 12 x 18)	Rs.14,74,200/-
2.	Towards Funeral Expenses	Rs. 15,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Loss of consortium to the 1 st petitioner, being the wife of the deceased.	Rs. 40,000/-
5.	Loss of love and affection for petitioners 2 to 5 (Rs.40,000/- x 4) (being children and mother of the deceased)	Rs. 1,60,000/-
	Total	Rs.17,04,200/-

Thus, considering the above facts and circumstances, this Court holds that the deceased was liable for 25% contributory negligence for the accident and 25% of compensation of Rs.17,04,200/- i.e., Rs.4,26,050/- (25% of Rs.17,04,200/-) has to be deducted from the compensation arrived by this Court. Therefore, the petitioners 1 to 5/claimants in M.C.O.P.NO.27 of 2017 are entitled to Rs.12,78,150/-. To that extent, the compensation awarded by the Tribunal is to be modified.

15. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.17,69,200/- to Rs.12,78,150/- (Rupees Twelve Lakhs Seventy Eight Thousand One Hundred and Fifty only).



(iii)The first claimant/wife of the deceased, who is the first respondent herein is entitled to receive a sum of Rs.4,78,150/-, the claimants 2 to 4 children of the deceased, who are minor respondents herein are entitled to receive a sum of Rs.2,00,000/- each and the 5th petitioner who is the mother of the deceased is entitled to receive a sum of Rs.2,00,000/- with proportionate interests and costs.

(iv)The appellant/ Insurance Company is directed to deposit the entire compensation amount of Rs.12,78,150/ (Rupees Twelve Lakhs Seventy Eight Thousand One Hundred and Fifty only), less the amount already deposited, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 27 of 2017 on the file of the Special Subordinate Judge/Motor Accident Claims Tribunal, Vendasandur within a period of six weeks from the date of receipt of a copy of this order. The excess amount, if any, already deposited by the appellant/Insurance Company shall be refunded to the appellant;

(v) On such deposit being made by the appellant/Insurance Company, the claimants/respondents 1 and 5 herein are permitted to withdraw their entire share amount as apportioned by this Court with proportionate interest and cost by filing appropriate application before the Tribunal, less the amount already withdrawn if any. The share amount of minor respondents 2 to 4 shall be deposited in any one of the Nationalized Bank till their



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attaining majority and the first respondent/guardian is entitled to receive interest payable on the said deposit once in three months. Consequently, connected Miscellaneous Petition is closed.

26.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

- 1.The Motor Accident Claims Tribunal-cum-Sub Court,
Vedasandur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
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