



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2793 of 2016

1.V.Clara

2.V.Velmurugan

... Appellants/Petitioners

..Vs..

1.U.Sahul Hameed

2.New India Assurance Co. Ltd.,

C/o. Motor Third Party Claims Office,

No.43, Moore Street,

Chennai - 600 001.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree made in MCOP.No.282 of 2008 on the file of the Additional District Judge, Motor Accident Claims Tribunal, I Fast Track Court at Chennai dated 2nd day of June 2011.

For Appellants : Mr.T.G.Balachandran

For Respondent 2 : Mr.D.Nadhamuni
R1 - Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 02.06.2011 passed by the Motor Accident Claims Tribunal (I Fast Track Court at Chennai) in MCOP.No.282 of 2008.

2. Heard Mr.T.G.Balachandran, learned counsel for the Appellants/claimants and Mr.D.Nadhamuni, learned counsel for the second respondent/ Insurance Company. The first respondent has remained exparte both before the Tribunal as well as this Court.

3. The Appellants/claimants unsatisfied with the quantum of compensation awarded by the Tribunal have preferred this



Appeal seeking for enhancement. The details of the compensation awarded by the Tribunal to the Appellants/claimants are as follows:

Heads	Award Amount (Rs.)
Loss of pecuniary benefits	1,50,000/-
Loss of non-pecuniary benefits	75,000/-
Loss of Future prospects	75,000/-
Funeral Expenses	5,000/-
Total	3,05,000/-

4. Before the Tribunal, the Appellant/claimant has filed seven documents which were marked as Ex.P1 to Ex.P7 and two witnesses were examined namely, the second Appellant/second claimant as PW1 and an eye witness to the accident as PW2. On the side of the second respondent Insurance Company, neither any document was filed nor any witness examined before the Tribunal.

5. The deceased was a student aged 5 years and studying at Airforce School, East Tambaram, Chennai - 59, when the accident happened on 22.11.2007. He died as a result of the said accident. The cause of the accident has also not been disputed by the respondents, as no appeal has been filed against the impugned award by the respondents. The only question to be considered by this Court is whether the quantum of compensation awarded by the Tribunal is a just compensation or not and whether the same will have to be enhanced by this Court.

6. The accident happened on 22.11.2007 and admittedly, the deceased was five years and at that time, he was a student. Learned counsel for the Appellants drew the attention of this Court to the following authorities in support of his submissions seeking enhancement of compensation:

(a) 2017(2), TNMAC 805, dated 8.12.2016, National Ins.Co.Ltd., Chennai-2 -Vs. K.Sugumar & 2 Others

(b) 2009(2) TNMAC SC, Page.1 dated 15.4.2009, Srimathi.Sarla Verma & Others -Vs.- Delhi Transport Corporation & another,

(c) 2009 ACJ 1924 SC, dated 15.05.2009, R.K.Malik. & another -Vs- Kiran Paul & Others.

(d) 2013(5) CTC 212, SC, dated 26.08.2013, Kishan Gopal & another -Vs.- Lala and Others



(e) A decision of the Learned Single of this Court in the case of Reliance Gen. Ins. Co. Ltd., -Vs- H.Mallika Bee and 2 Others in CMA No.1625 of 2020 in O.P.No.5470 of 2013, dated 10.11.2020

(f) A decision of the learned Single Judge of this Court in the case of M.Sumithra -Vs- J.Anbalagan and another in CMA No.31 of 2020 dated 16.3.2021 reported in 2021(1) TNMAC 465

7. In a recent decision rendered by a learned Single Judge of this Court, involving a minor aged 13 years in respect of an accident that happened in the year 2013, this Court has directed the insurance company to pay a compensation of Rs.7,45,000/-. Since the deceased in this case also is a minor aged 5 years at the time of the accident, the same yardstick as applied by another learned Single Judge of this Court in CMA.No.1625 of 2020 can be followed. The Hon'ble Supreme Court in various decisions cited by the learned counsel for the Appellants also has fixed the compensation for a deceased minor based on the year of the accident. The decision rendered by another learned Single Judge of this Court in CMA.No.1625 of 2020 in the case of Reliance Gen. Ins. Co. Ltd vs. H.Mallika Bee and 2 Others which is dated 10.11.2020 and is a very recent decision can be followed by this Court for the case of these Appellants also.

8. Accordingly, this Court enhances the compensation payable to the Appellants/claimants from Rs.3,05,000/- as fixed by this Tribunal to Rs.7,45,000/- by this Court as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of pecuniary	6,30,000/- (3500 x 12 x 15)
Loss of love and affection	80,000/-
Transportation	5,000/-
Funeral Expense	15,000/-
Loss of estate	15,000/-
Total	7,45,000/-

Conclusion:

9. In the result, this appeal shall stand partly allowed. The Second Respondent Insurance Company is directed to deposit the amount awarded by this Court together with interest at the



rate of 7.5% per annum from the date of claim till the date of deposit and costs after deducting the amount already deposited to the credit of MCOP.No.282 of 2008 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the respective shares of award amount lying to the credit of MCOP.No.282 of 2008 to the bank account of the Appellants/claimants through RTGS within a period of one week thereafter. The requisite Court fee, if any has to be paid by the Appellants before receiving the copy of this Judgment. No costs.

Sd/-

Deputy Registrar(Accounts)

// True Copy //

Sub Assistant Registrar

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To

1.The I Fast Track Court at Chennai

2.The Section Officer

V.R.Section, High Court of Madras.

+1cc to Mr.T.G.Balachandran, Advocate SR.No.29256

C.M.A.No.2793 of 2016

SR-II(CO)

CB(23/11/2021)