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C.M.A. No.1640 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1640 of 2023

1.B.Baby

2.D.Malathy

3.B.Iyyappan

4.B.Sathish Kumar

... Appellants

Vs.

1.The Joint Director-Health Services,
C/o. G.V.K.EMRI, 1st Floor, EMCC
DMC Campus, West Teynampet,
Anna Salai, Chennai – 600 006.

2.National Insurance Co.Ltd.,
Regina Mansion,
No. 46, Moore Street,
Parry's Chennai – 600 001.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.3947 of 2018 on the filed on the Motor Accident Claims Tribunal / (II Court of Small Causes, Chennai) dated 09.03.2022.



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For Appellants : Mrs. Ramya V.Rao

For Respondents : Mr. Rathana Thara
R1 – Ex parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 09.03.2022, made in M.C.O.P. No.3947 of 2018 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2. The appellants filed M.C.O.P. No.3947 of 2018 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai claiming a sum of Rs.20,00,000/- as compensation for the death of one Boopathi, who died in the accident that took place on 31.03.2018.

3. According to the appellants, on 31.03.2018 at about 10.45 am, while the deceased Boopathi was riding the motorcycle bearing Registration No.TN-05-BK-4737 proceeding on the G.N.T. Salai, Thattankulam salai



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junction, Madhavaram, an ambulance vehicle bearing registration No.TN-20-G-2085 proceeding in the same direction, tried to overtake motorcycle, hit behind the motorcycle and caused the accident. Due to the impact, the deceased Boopathi sustained grievous injuries and died on the spot. Hence, the appellants filed claim petition claiming compensation against the respondents.

4. The first respondent remained ex-parte before the Tribunal.

5. The second respondent filed a counter statement denying all the averments made by the appellants in the claim petition. According to the second respondent, the deceased Boopathi rode the motorcycle in a rash and negligent manner and invited the accident; and in any case the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.



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6. The 1st appellant examined herself as PW1 and one Yogeswaran, eye-witness as PW2 and marked Ex.P.1 to Ex.P.9. On behalf of the second respondent / Insurance Company, one Sampath was examined as RW.1 and one document was marked as Ex.R1.

7. The Tribunal after considering the evidence and documents filed on either side, held that the accident occurred due to the rash and negligent driving by the driver of the first respondent; and directed the second respondent to pay a sum of Rs.8,31,500/- as compensation to the appellants.

8. Aggrieved by the said award, the appellants have preferred the present appeal seeking enhancement of compensation.

9. The learned counsel for the appellants submitted that the compensation awarded by the Tribunal is meagre, that the Tribunal had fixed a very low monthly notional income of Rs.12,000/- per month, although the appellants had proved that the deceased was doing Real Estate business and earning Rs.50,000 per month. The learned counsel further submitted that



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though compensation under the head “loss of love and affection” was awarded for the first appellant, the compensation under the said head for appellants 2 to 4 was not awarded and hence, prayed for enhancement of compensation.

10. Since the first respondent remained ex parte before the Tribunal, the learned counsel for the appellants prayed for dispensing with notice to the first respondent. Hence, notice to the first respondent is dispensed with.

11. The learned counsel for the second respondent per contra submitted that the award of the Tribunal is just and reasonable and no interference is called for. Hence, prayed for dismissal of the appeal.

12. On perusal of the records, this Court finds that PW.1, who is the wife of the deceased had stated that the deceased was working as a Real Estate agent. However, no documentary evidence was produced to prove the income of the deceased. Considering the age, avocation and the year of accident, this court of the view that it would be just and reasonable to fix



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Rs.14,000/- as monthly notional income of the deceased. Though the claimants stated that the deceased was aged 58 years, the Tribunal on appreciation of evidence held that the age of the deceased has to be reckoned as 63 years based on Ex.P5, the driving license of the deceased. The said finding of the Tribunal cannot be faulted. Thus, the award of compensation under the head loss of dependency is calculated as follows: -

$$\text{Rs.14,000} \times 12 \times 7 \times \frac{3}{4} = \text{Rs.8,82,000/-}$$

The Tribunal had not awarded any compensation towards loss of love and affection to the appellants 2 to 4, who are the children of the deceased. Hence, a sum of Rs.40,000/- each to the appellants 2 to 4 is awarded towards loss of love and affection. Further, the award of Rs.44,000/- to the first appellant is reduced to Rs.40,000/-. Thus, the award under the head loss of love and affection is enhanced to Rs.1,60,000/-. Rs.16,500/- awarded by the Tribunal towards funeral expenses is reduced to Rs.15,000/-. The compensation awarded by the Tribunal under other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.8,31,500/- to Rs.10,72,000/-, break-up is as follows: -



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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	7,56,000/-	8,82,000/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Loss of love and affection	44,000/-	1,60,000/- (Rs.40,000/- each to the appellants)	Enhanced
4.	Funeral expenses	16,500/-	15,000/-	Reduced
	Total	8,31,500/-	10,72,000/-	Enhanced by Rs.2,40,500/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,31,500/- is hereby enhanced to Rs.10,72,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment.



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On such deposit, the appellants are permitted to withdraw their share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn, on the basis of apportionment fixed by the Tribunal. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

30.08.2023

Index: Yes/No

Neutral Citation: Yes / No

AT

To

1.The Motor Accident Claims Tribunal,
II Court of Small Causes, Chennai.

2.The Section Officer
VR Section,
High Court, Madras.



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SUNDER MOHAN, J

AT

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