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C.M.A.No.1805 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1805 of 2023

1.P.Dasarathan
2.M.Gomathi
3.P.Desingh
4.P.Sundramurthy
5.P.Devan
6.V.Shanthi

... Appellants

Vs

1.M.Yoganathan

2.Reliance General Insurance Company Limited,
Reliance House, R.O. Legal Department, 6th Floor,
No.6, Hoddows Road, Nungambakkam,
Chennai – 6.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the amount awarded in M.C.O.P.No.322 of 2016 dated 21.12.2016 on the file of Motor Accident Claims Tribunal, (Chief Judge, Small Causes Court), Chennai.

For Appellants : Mr.K.Varadhakamaraj

For Respondents : Mr.S.Arun Kumar, for R2
R1 – Ex parte



C.M.A.No.1805 of 2023

J U D G M E N T

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This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 21.12.2016 made in M.C.O.P.No.322 of 2016 on the file of the Motor Accident Claims Tribunal, (Chief Judge, Small Causes Court), Chennai.

2. The appellants filed M.C.O.P. No.322 of 2016 on the file of the Motor Accident Claims Tribunal, (Chief Judge, Small Causes Court), Chennai, claiming a sum of Rs.20,00,000/- as compensation for the death of one Kannammal, who died in the accident that took place on 13.12.2015.

3. According to the appellants, on 13.12.2015 at about 16.30 hours, while the deceased Kannammal along with her daughter-in-law was walking on the road on Maraimalai Nagar to Kadambur Road, the motorcycle bearing Registration No.TN-19-S-3008, driven by the rider in a rash and negligent manner, hit the deceased Kannammal and caused the accident; that in the above said accident, the said Kannammal sustained



grievous injuries; that immediately she was admitted in the S.R.M. Hospital and died on the same day. Hence, the appellants filed claim petition claiming compensation against the respondents.

4. The second respondent filed counter statement denying all the averments made by the appellants in the claim petition. According to the respondent, the deceased tried to cross the road without minding the on coming motorcycle, fell on the motorcycle which was proceeding slowly on proper side of the road and caused the accident; that total compensation claimed by the appellants are excessive and prayed for dismissal of the claim petition.

5. The 1st appellant examined himself as PW1 and Kalaivani, eye-witness to the accident as PW2. Eighteen documents were marked as Ex.P.1 to Ex.P.18. The respondent did not examine any witness or mark any document.

6. The Tribunal after considering the evidence and documents filed on the side of the appellants, held that the accident occurred due to the



C.M.A.No.1805 of 2023

negligent riding of the rider of the motorcycle belonging to the first respondent; directed the second respondent to pay a sum of Rs.2,25,000/- as compensation to the appellants. Aggrieved by the said order, the appellants have preferred the present appeal seeking enhancement of compensation.

7. The learned counsel for the appellants submitted that the Tribunal had erred in awarding only Rs.10,000/- each to the appellants under the head loss of love and affection when they are entitled to Rs.40,000/- each. The learned counsel further submitted that the award under the other heads are reasonable and may be confirmed.

8. The first respondent remained ex parte before the Tribunal and the learned counsel appearing for the appellants made an endorsement to dispense with notice to the first respondent. Hence, notice to the first respondent is dispensed with.

9. The learned counsel for the second respondent / Insurance Company per contra submitted that the deceased was aged 70 years at the time of accident. The claimants are not dependants and therefore, the award



C.M.A.No.1805 of 2023

of the Tribunal is just and reasonable and hence, prayed for dismissal of the appeal.

10. The only question involved in the instant appeal is-

i) Whether the appellants are entitled to Rs.40,000/- each under the head loss of love and affection?

11. As per the dictum of the Hon'ble Supreme Court in ***Sarala Verma & Others Vs. Delhi Transport Corporation & another***, reported in ***2009 (2) TNMAC 1 (SC)***, the appellants are each entitled to Rs.40,000/- under the head loss of love and affection. Hence, the compensation under the head loss of love and affection is enhanced from Rs.60,000/- to Rs.2,40,000/-. The compensation awarded under the other heads are confirmed.

12. It is submitted that the appeal has been filed with a delay of 1065 days. In view of the enormous delay, this court condoned the delay on condition that the appellants will forfeit the interest for the delay period. Hence, the appellants are not entitled to interest for the delay period of 1065



C.M.A.No.1805 of 2023

days for the enhanced amount.

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13. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,25,000/- to Rs.4,05,000/-, break-up as follows -

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	1,35,000/-	1,35,000/-	Confirmed
2.	Loss of love and affection	60,000/-	2,40,000/-	Enhanced
2.	Transport charges	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	2,25,000/-	4,05,000/-	Enhanced by Rs.1,80,000/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,25,000/- is hereby enhanced to Rs.4,05,000/- together with interest at 7.5% per annum from the date of petition till the date of deposit. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.1,80,000/- enhanced by this Court as per the order of this Court dated 25.07.2023, made in C.M.P.No.12017 of 2021 in



C.M.A.No.1805 of 2023

C.M.A.SR.No.2890 of 2021. 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 four (4) weeks from the date of a receipt of copy of this Judgment. 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.

16.08.2023

Index: Yes/No
Neutral Citation: Yes/No
AT

To

1.The Motor Accident Claims Tribunal,
(Chief Judge, Small Causes Court), Chennai.

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



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C.M.A.No.1805 of 2023

SUNDER MOHAN, J.

AT

C.M.A.No.1805 of 2023

16.08.2023