



C.M.A.No.759 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

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1.Indhumathi

2.Minor Monika,

Rep. by Natural Guardian/Mother Indhumathi

3.Annapoorani

... Appellants

Versus

1.D.Elangovan

2.The Manager,

ICICI Lombard General Insurance Company Ltd.,

Chottabhai Centre,

No.140, Nungambakkam High Road,

Chennai – 34.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 02.08.2019 passed in M.C.O.P.No.1046 of 2016, on the file of the Motor Accident Claims Tribunal, Additional District Court, (FTC), Kanchipuram.

For Appellants

: Mr.M.Lokesh

For R2

: Mr.P.Nagesh

JUDGMENT

The instant appeal has been filed by the appellants/claimants seeking enhancement of compensation.



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2.The appellants have filed the claim petition stating that on 13.09.2016 at about 6.00 p.m., while the deceased was driving his auto on a state highway, the bus insured with the 2nd respondent herein came in a rash and negligent manner, dashed against the auto; that as a result of which, the deceased sustained fatal injuries.

3.The 1st respondent-owner of the offending vehicle remained *ex-parte* before the Tribunal.

4.The 2nd respondent filed a counter stating that the accident took place only due to the negligence of the deceased and that in any case, the compensation claimed by the appellants was excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, on behalf of the appellants, two witnesses were examined and Exs.P1 to P7 were marked. The 2nd respondent neither examined any evidence nor marked any document.

6.The Tribunal after considering the oral and documentary evidence held that the accident took place due to the negligence of the



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driver of the bus insured with the 2nd respondent and directed the 2nd respondent to pay a sum of Rs.11,20,000/- as compensation to the appellants.

7.The learned counsel for the appellants submitted that though the appellants had established that the deceased was an auto driver and he owned an auto, the Tribunal had fixed a meagre notional income of Rs.7500/- and hence, prayed for enhancement of compensation.

8.Since the 1st respondent remained *ex-parte* before the Tribunal, the learned counsel for the appellants requested this Court to dispense with notice to the 1st respondent and he had also filed a memo to that effect. Hence, notice to the 1st respondent is dispensed with.

9.The learned counsel for the 2nd respondent per contra submitted that the award of the Tribunal is just and reasonable; that the appellants had withdrawn the award amount deposited by the 2nd respondent and thereafter, they have preferred the instant appeal and hence, the appeal is liable to be dismissed.



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10.The only question involved in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

11.On perusal of records, it is seen that though P.W.1 – wife of the deceased deposed before the Tribunal that the deceased owned an auto and was as an auto driver also. However, no document was produced to establish the same. The learned counsel for the appellants produced the RC book to show that the deceased owned an Auto. However, the said document cannot be taken into consideration since it was not filed before the Tribunal. Considering the age of the deceased, his avocation and the year of accident, this Court is of the view that, it would be just and reasonable to fix the notional income of the deceased at Rs.14,000/- per month. Since the deceased was 44 years at the time of accident, the appellants are entitled to 25% enhancement towards future prospects. The multiplier applicable is 14. After deducting 1/3rd towards personal expenses, the compensation under the head loss of income would be as follows:

$$\text{Rs.17,500/- (Rs.14000 + 25\%) X 12 X 14 X } 2/3 = \text{Rs.19,60,000/-}$$



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The appellants 2 and 3 are entitled to compensation under the head loss of love and affection at the rate of Rs.40,000/- each. The amount awarded by the Tribunal under other heads is just and reasonable and the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	10,50,000	19,60,000	Enhanced
2.	Funeral Expenses	15,000	15,000	Confirmed
3.	Loss of Consortium	40,000	40,000	Confirmed
4.	Loss of Estate	15,000	15,000	Confirmed
5.	Loss of Love and Affection	-	80,000	Granted
	Total	11,20,000	21,10,000	Enhanced by Rs.9,90,000/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,20,000/- is hereby enhanced to Rs.21,10,000/-, 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 2nd 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



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period of six (6) weeks from the date of receipt of a copy of this

Judgment. On such deposit, the appellants 1 and 3 are permitted to withdraw their respective share of the award amount now determined by this Court, as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor 2nd appellant is directed to be deposited in any one of the Nationalised Bank, till the minor attains majority. The 1st appellant- mother of the minor 2nd appellant is permitted to withdraw the accrued interest once in three months. . The appellants are directed to pay the necessary Court fee, if any, on the enhanced award amount. No costs.

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To:

1.The Additional District Judge,
The Motor Vehicle Accident Tribunal,
Fast Track Court, Kanchipuram.

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

SUNDER MOHAN, J.



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