



WEB COPY



C.M.A.No.1809 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1809 of 2023

- 1.Ezhilarasi @ Kala
- 2.Keerthana (Minor)
- 3.Jayalakshmi
- 4.Ramasamy

... Appellants

Vs

- 1.T. Chitra

- 2.M/s. National Insurance Company Limited,
No.74A, Paramathy Road,
Namakkal – 637 001.

- 3.K. Chandran

- 4.M/s. ICICI Lombard General Insurance Company Limited,
Zenith House,
Keshavrao Khade Marg,
Mahalakshmi,
Mumbai – 400 034.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.04.2018 in MCOP.No.874 of 2009 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Salem.



WEB COPY



C.M.A.No.1809 of 2023

For Appellants : Mr. C. Prabakaran
For Respondents : Mr. S. Vadivel, for R2
Mr. M. Jayaraj, for R4
R1 & R3 – Ex parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimants challenging the quantum of compensation granted by the Tribunal in the award dated 27.04.2018 made in M.C.O.P. No.874 of 2009 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Salem.

2. The appellants filed M.C.O.P. No.874 of 2009 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Salem, claiming a sum of Rs.22,25,000/- as compensation for the death of one Gopikannan, who died in the accident that took place on 10.04.2008.

3. According to the appellants, on 10.04.2008 at about 03.30 am, while the deceased Gopikannan was travelling in a Trailer bearing Registration No.TN-28-M-5369, the driver of the Trailer drove the vehicle



C.M.A.No.1809 of 2023

in a rash and negligent manner and fell into an adjacent agricultural farm, due to which the said Gopikannan died on the spot. Hence, the appellants filed claim petition claiming compensation against the respondents.

4. The first and third respondents remained ex parte before the Tribunal.

5. The second respondent filed counter statement denying all the averments made by the appellants in the claim petition; and stated that at the time of accident, the vehicle was insured with the fourth respondent; and that in any event the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. The fourth respondent filed a counter stating that the accident took place due to the negligence of the driver of the first respondent; and that in any case, the claim is excessive and prayed for dismissal of the appeal.



C.M.A.No.1809 of 2023

7. The 1st appellant examined herself as PW1 and one Surya, eye-witness to the accident as PW2 and marked Ex.P.1 to Ex.P.6. On behalf of the second respondent / Insurance Company, one witness was examined as R.W.1 and three documents were marked as Ex.R1 to Ex.R3.

8. The Tribunal after considering the evidence and documents filed on the side of the appellants and the second respondent, held that the accident occurred due to the rash and negligent driving by the driver of the first respondent; directed the respondents 1 and 2 to jointly and severally pay a sum of Rs.10,77,200/- as compensation to the appellants.

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

10. The learned counsel for the appellants/claimants submitted that the Tribunal had fixed a very meagre notional income of Rs.4,500/- per month although the appellants had established that the deceased was working as Poclain Operator. The learned counsel therefore, sought for enhancement of the compensation amount awarded by the Tribunal.



C.M.A.No.1809 of 2023

11. Since the first and third respondents remained ex parte before the Tribunal, the learned counsel for the appellants prayed for dispensing with notice to the first and third respondents. Hence, notice to the first and third respondents dispensed with.

12. The learned counsel for the second respondent per contra submitted that the Tribunal had awarded just and reasonable compensation. The claimants neither proved the avocation nor the income of the deceased and hence, prayed for dismissal of the appeal.

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

Whether the compensation awarded by the Tribunal is just and reasonable?

14. PW.1, the wife of the deceased had deposed that the deceased was working as a Poclain Operator and was earning Rs.12,000/- per month. However, she had not produced any documentary proof to establish the income. In the facts, 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



C.M.A.No.1809 of 2023

reasonable to fix Rs.8,000/- as monthly notional income. The appellants are entitled to 40% enhancement towards future prospects. The multiplier applicable is '16'. Since there are 4 dependants, 1/4 has to be deducted towards his personal expenses. Therefore, the compensation under the head loss of dependency has to be: -

$$8,000+3,200(8,000\times 40\%)\times 12\times 16\times 3/4=16,12,800/-$$

Further, the appellants 2 to 4 are each entitled to Rs.40,000/- under the head loss of love and affection. Therefore, the award under the head loss of love and affection is enhanced to Rs.1,20,000/-. The compensation awarded by the Tribunal under other heads are justified and the same is confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.10,77,200/- to Rs.18,02,800/-, break-up is 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 dependency	9,07,200/-	16,12,800/-	Enhanced
2.	Loss of love and affection	1,00,000/-	1,20,000/- (Rs.40,000/- each to the appellants 2 to 4)	Enhanced



C.M.A.No.1809 of 2023

3.	Loss of consortium	40,000/-	40,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Transport charges	15,000/-	15,000/-	Confirmed
	Total	Rs.10,77,200/-	18,02,800/-	Enhanced by Rs.7,25,600/-

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,77,200/- is hereby enhanced to Rs.18,02,800/- together with interest at 7.5% per annum from the date of petition till the date of deposit. The appellants are not entitled for any interest for the delay period on the amount of Rs.7,25,600/- enhanced by this Court as per the order of this Court dated 26.07.2023, made in C.M.P.No.1978 of 2022 in C.M.A.SR.No.7789 of 2022. 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. 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



C.M.A.No.1809 of 2023

Tribunal. The share of the minor 2nd appellant is directed to be deposited in any one of the Nationalised Bank till the minor appellant attains majority.

However, 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.

24.08.2023

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



C.M.A.No.1809 of 2023

To

1. The Motor Accident Claims Tribunal,
II Additional District Judge, Salem.

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



WEB COPY



C.M.A.No.1809 of 2023

SUNDER MOHAN, J.

AT

C.M.A.No.1809 of 2023

24.08.2023