IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

CMA.No.1133 of 2023

1.S.Uvarani
2.S.Latshitha
3.C.Rajathi

... Appellants

Vs.

1.E.Suhirtha Bai
(Was set exparte in the Trial Court)

2.The National Insurance Co. Ltd.,
Motor Third Party Claims Cell,
No.66, Lyola Towers,
Greams Road, Chennai- 600 006.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 challenging the Award and Decree dated 24.08.2022 made in M.C.O.P.No.1113 of 2020 on the file of the Motor Accidents Claims Tribunal Chief Judge, Court of Small Cause, Chennai.

For Appellants : Mrs.P.T.Saleem Fathima

For R-1 : Service awaited (set exparte in the Trial Court)
For R-2 : Mr. J. Chandran

JUDGMENT

This appeal is filed challenging the Award and Decree dated 24.08.2022 made in M.C.O.P.No.1113 of 2020 on the file of the Motor Accidents Claims Tribunal Chief Judge, Court of Small Cause, Chennai.

2. The appeal is filed by the claimants seeking enhancement of compensation.

The appeal is filed by the widow, minor daughter and the mother of the deceased Senthil Kumar who died on 20.11.2019. When the deceased was riding his motor cycle from East to West direction near Madurai National Highways a car which was driven by its driver, came from North to South direction and hit against the deceased's motor cycle. Due to the impact, the deceased sustained severe head injuries and died on the spot.

3. The deceased was aged 28 years at the time of accident and was earning Rs.25,000/- per month as an Agriculturist, owner of a brick chamber and also by doing milk vending business. The claimants therefore filed a claim petition claiming a compensation of Rs.50,00,000/-.

4. Before the Claims Tribunal, the first respondent remained ex parte and

the claim petition was contested by the second respondent Insurance company by filing counter, wherein the averments and the allegations in the claim petition including that of negligence, liability and quantum were disputed.

5. Before the Claims Tribunal, the first claimant examined herself as P.W.1 and an eye witness as P.W.2 and marked Ex.P.1 to Ex.P.10. On the side of the second respondent, no oral or documentary evidence was filed.

6. The Claims Tribunal on an assessment of entire evidence on record, returned a finding of negligence against the driver of first respondent's vehicle, assessed the compensation at Rs.15,83,600/- at 7.5% interest and mulcted the liability on the second respondent/Insurance Company.

7. Not satisfied with the award passed by the Claims Tribunal, the appellants have preferred the above appeal claiming enhancement of compensation.

8. The learned counsel for the appellants submitted that the Claims Tribunal erred in fixing the notional income of the deceased at Rs.8,000/- per month, for the accident which took place in the year 2019. The appellants counsel submitted

that the deceased was aged 28 years at the time of the accident and therefore considering his age and the business carried on by him the Tribunal ought to have fixed higher income.

9. The learned counsel for the second respondent, on the other hand submitted that the assessment of compensation by the Claims Tribunal was just, fair, and reasonable and did not call for any interference by this Court.

10. I have heard both the learned counsels and perused the materials placed on record.

11. It is not disputed that the deceased was aged 28 years at the time of accident and that he was an Agriculturist, owning brick chamber and was also doing milk vending business and therefore considering the said facts and further considering that the accident took place in the year 2019, I am of the view that the notional income of the deceased can be fixed at Rs.15,000/- per month. The monthly income of the deceased is therefore fixed at Rs.15,000/- and 40% is added towards future prospects (15,000 x 40/100 = 6,000/-). Therefore the monthly income of the deceased would be Rs.21,000/- (Rs15,000 + 6000= 21,000/-). 1/3rd of the income is deducted towards the personal expenses of the

deceased and multiplier 16 is adopted. Therefore the loss towards income and the dependency is fixed at Rs.26,88,000/- (21,000 x 12 x 16 x 2/3 = Rs. 26,88,000/-). The award of the Claims Tribunal with respect to the other heads is fair and reasonable and in my view, the same need not be interfered with by this Court.

12. In the light of the above discussion, the award of the Claims Tribunal is modified as follows:

S.No	***Various Heads***	***Award by Tribunal (Amount in Rs.)***	***Award by this Court (Amount in Rs.)***
1.	Loss of Income/ Dependency	14,33,600/-	26,88,000/-
2.	Loss of Estate	15,000/-	15,000/-
3.	Loss of Consortium Rs.40,000/- (Each) x 3	1,20,000/-	1,20,000/-
4.	Towards Funeral Expenses	15,000/-	15,000/-
Total		15,83,600/-	28,38,000/-

13. The learned counsel for the appellants fairly submits that the award of the Claims Tribunal has already been deposited by the Insurance Company and therefore a direction may be issued to deposit the balance amount within a reasonable time.

14. The second respondent/Insurance Company is therefore directed to deposit the enhanced amount of Rs.12,54,400/- within a period of six (6) weeks from the date of receipt of copy of this Judgment along with accrued interest and

on such deposit being made, the claimants 1 and 3 shall withdraw the same as per the apportionment fixed by the Claims Tribunal. The 2nd claimants share shall be deposited as per the directions of the Claims Tribunal.

In the result the appeal is partly allowed. There shall be no order as to costs.

05.06.2023

dsn
Index: Yes/No
Speaking Order: Yes/No
Neutral citation: Yes/No

To.
1. The Chief Judge (Motor Accidents Claims Tribunal),
Court of Small cause,

Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.

N.MALA.J.,

dsn

C.M.A.No.1133 of 2023

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