



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.898 of 2022

1.Padmini

2.Arumugam

...Appellants

Vs.

1.Gunaraj

2.The Manager,

New India Assurance Company Limited,
No.594, Opli Towers, D.B.Road, R.S.Puram,
Coimbatore District 641 002.

3.Suganandhini

...Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.08.2021 in M.C.O.P.No.575 of 2018 on the file of the Motor Accident Claims Tribunal / Sessions Judge, Special Court for trial of cases under SC/ST (POA) Act, Namakkal.

For Appellants : Mr.T.S.Arthanareeswaran

For Respondents : M/s.A.Salomi for R2

No appearance for R1 & R3



J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 18.08.2021 made in M.C.O.P.No.575 of 2018 on the file of Motor Accident Claims Tribunal/ Sessions Judge, Special Court for trial of cases under SC/ST (POA) Act, Namakkal.

2. The appellants are claimants in M.C.O.P.No.575 of 2018 on the file of Motor Accident Claims Tribunal / Sessions Judge, Special Court for trial of cases under SC/ST (POA) Act, Namakkal. They filed the said claim petition claiming a sum of Rs.40,00,000/- as compensation for the death of one Rinash, who died in the accident that took place on 01.01.2017.

3. According to the appellants, on the date of accident i.e., on 01.01.2017 at about 12.30 a.m., while the deceased was riding his two wheeler bearing Registration No.TN 88 Y 3771, the driver of the car belonging to the 1st respondent drove the same in a rash and negligent manner without observing the traffic rules, dashed against the two wheeler of the deceased; due to the said impact, the deceased suffered injuries and succumbed to it; that the deceased, who was aged 27 years, was an engineering graduate and working as a Manager in Sri Murugan Transports; and that he was a sole bread winner of his family



and hence, the respondents 1 and 2 are liable to pay Rs.40 lakhs as compensation.

4. The first respondent, who is the owner of the car, remained ex-parte before the Tribunal and hence, the learned counsel for the appellant has made an endorsement to dispense with the notice to the first respondent. The learned counsel for the appellant submitted that the third respondent was originally the claimant and since no amount was awarded in her favour, notice to the 3rd respondent may be dispensed with and he has made an endorsement to that effect also.

5. The second respondent/Insurance Company filed counter statement, denying the averments made in the claim petition and stated that the accident was not due to rash and negligent driving of the car belonging to the first respondent and that in any case the deceased was also responsible for an accident. In any event, the compensation claimed by the claimants is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellants examined three witnesses as P.W.1 to P.W.3 and marked 17 documents as Exs.P1 to P17. The 2nd



respondent/Insurance Company did not let in any oral and documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the deceased died only due to rash and negligent act of the driver of the first respondent's vehicle and directed the second respondent being the insurer of the vehicle to pay a sum of Rs.23,43,085/- as compensation to the appellants and dismissed the claim petition of the 3rd respondent.

8. The learned counsel for the appellants submitted that the Tribunal having held that the first respondent was guilty of negligence, the second respondent was liable to pay the compensation and that the deceased was an engineering graduate, ought to have fixed his monthly income at Rs.18,000/- as claimed by the appellants. In support of his contentions, the learned counsel relied on the judgments of the Hon'ble Division Bench reported in *2021 (1) TNMAC 805 (DB) (Reliance General Insurance Company Limited Vs. A.Senthilkumar and another)* and *2016 (2) TNMAC 424 (DB) (S.Saraswathy and another Vs. A.Elumalai and Oriental Insurance Company)* and prayed for enhancement.



9. Per contra, the learned counsel for the second respondent/ Insurance Company submitted that the Hon'ble Division Bench of this Court in 2016 (2) TNMAC 424 (DB) has fixed the notional income at Rs.20,000/- by considering the fact that the deceased was studying in engineering college and he had other sources of income and hence, the said judgment cannot be made applicable to the facts of the present case. She further submitted that the judgment of the Hon'ble Division Bench of this Court in 2021 (1) TNMAC 805 (DB) also may not be applicable, since in the instant case the claimants have failed to establish the income of the deceased. The salary certificate produced is of the year 2021, whereas the accident had taken place in 2017. He further submitted that the Tribunal has rightly fixed the notional income as Rs.15,000/- per month and there was no necessity for enhancement of the notional income and prayed for dismissal of the appeal.

10. The short question involved in the instant appeal is whether the notional income fixed by the Tribunal at Rs.15,000/- per month for the deceased, who is an engineering graduate, is justified. There is no dispute with regard to the quantum of compensation awarded by the Tribunal under other heads. It is seen from the records that the appellants had claimed Rs.18,000/- as the monthly income drawn by the deceased at the time of his death. The



Tribunal has disbelieved the documents produced by the appellants. However, the Tribunal had fixed the notional income of the deceased at Rs.15,000/- per month. Considering the fact that the deceased was an engineering graduate, who finished his degree in the year 2015; that the accident is of the year 2017 and in similar case involving engineering students, this Court had fixed the notional income between Rs.18,000/- to Rs.20,000/- for accidents of the year 2018, this Court is of the view that the notional income fixed by the Tribunal can be enhanced from Rs.15,000/- to Rs.17,000/- in the facts and circumstances of the case. The Tribunal has rightly applied multiplier '17'. After deducting 1/2 towards personal expenses as he was a bachelor, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.17,34,000/- {Rs.8,500/- [Rs.17,000/- - 8,500/-] x 12 x 17 }. The appellants are entitled to 40% enhancement towards future prospects and hence, a sum of Rs.6,93,600/- is awarded towards future prospects. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. The compensation under the head loss of love and affection has to be Rs.40,000/- each and hence, the same is reduced to Rs.80,000/- from Rs.1,00,000/-.



11. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation, more than the amount claimed by the claimants. 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 or reduced
1.	Loss of dependency	15,30,000	17,34,000	Enhanced
2.	Loss of future prospects	6,12,000	6,93,600	Enhanced
3.	Loss of love and affection	1,00,000	80,000	Reduced
4.	Medical Expenses	71,085	71,085	Confirmed
5.	Funeral Expenses	15,000	15,000	Confirmed
6.	Loss of estate	15,000	15,000	Confirmed
	Total	23,43,085	26,08,685	Enhanced by Rs.2,65,600/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.23,43,085/- is hereby enhanced to Rs.26,08,685/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are



directed to pay necessary Court fee, if any, on the enhanced compensation. The 1st appellant being the mother of the deceased is entitled to a sum of Rs.16,08,685/-, the 2nd appellant being the father of the deceased is entitled to a sum of Rs.10,00,000/- as compensation. The 2nd respondent/Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective shares of the award amount along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. No costs.

06.07.2023

Index: Yes/No

Internet: Yes/No

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To

1.The Motor Accident Claims Tribunal /
Sessions Judge, Special Court for
trial of cases under SC/ST (POA) Act, Namakkal.

2.The Section Officer
VR Section
High Court of Madras
Chennai – 600 104

SUNDER MOHAN,J.



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