



C.M.A. No.229 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.229 of 2022

1.Vijayamma
2.Manuja
3.Vinaykumar

..

Appellants

Vs.

1.R.Nagesh
2.The Branch Manager,
The New India Assurance Co.Ltd,
Branch Office, No. 2241/4,
Giriamma Shambugowda Complex,
Church Road, Channapatna,
Karnataka State-571501

..

Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.04.2021 made in M.C.O.P. No.75 of 2020 on the file of the Motor Accident Claims Tribunal and Special district Court for MACT Cases, Krishnagiri.



C.M.A. No.229 of 2022

For Appellants : Mr.S.P.Yuvaraj

For Respondents : No appearance for R1
Ms.R.Rathnathara for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 09.04.2021, made in M.C.O.P. No.75 of 2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

2.The appellants filed the above claim petition claiming a sum of Rs.35,00,000/- as compensation for the death of one Jogappa, who died in the accident that took place on 29.03.2019.

3. According to the appellants, on the date of accident, the deceased Jogappa was travelling as a loading and unloading coolie alongwith other coolies to transport paddy bran bags in the lorry bearing Regn.No.KA05 6314 from Sri Balaji Modern Rice Mill situate at Shoolagiri Jammendhar Kottai, the said Jogappa was tying the bags with the rope on the back side. At that



C.M.A. No.229 of 2022

time, the driver of the lorry, without noticing the same, drove the same in a rash and negligent manner on reverse and hit on the said Jogappa, due to which the said Jogappa sustained head injury and other fatal injuries to his vital organs. He was immediately taken to Government hospital, Shoolagiri for treatment however, he died on the way to hospital. Hence, the appellants filed claim petition claiming compensation against the respondents.

4. The 1st respondent filed counter statement and submitted that the deceased was a loading and unloading coolie under him. The deceased did not follow the rules of the road and in a rash and negligent manner, crossed back side of the lorry which proceeded on the reverse and invited the accident. Hence, this respondent is not liable to pay compensation. The total compensation claimed by the appellants are excessive and prayed for dismissal of the claim petition.

5. The 2nd respondent filed counter and denied all the averments made by the appellants in the claim petition. The alleged accident has occurred



C.M.A. No.229 of 2022

under the course of employment and hence the appellants are entitled to get compensation from only from the owner of the vehicle under the Workmen's Compensation Act. Hence, the 2nd respondent is not liable to pay compensation. In any event, the total compensation claimed by the appellants are excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the first appellant examined herself as PW1 and examined one Thottaporaiayya, eye-witness to the accident as PW2. Eleven documents were marked as Exs.P1 to P11. Neither document was marked nor witness was examined on the side of the respondents.

7. The Tribunal, considering the oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the first respondent and directed the second respondent, being the insurer of the lorry to pay a sum of Rs.5,42,028/- as compensation to the appellants.



C.M.A. No.229 of 2022

8. Aggrieved by the said order, the appellants have preferred the present appeal seeking enhancement of compensation.

9. The learned counsel appearing for the appellants submitted that the compensation awarded by the Tribunal is meagre. Though the appellants have claimed that the deceased was aged 49 years at the time of accident, the Tribunal had erroneously fixed the age of the deceased as 65 years based on the legal heir certificate, Ex.P11. The learned counsel further submitted that the wife of the deceased is aged 42 years and therefore it should be presumed that the age mentioned in the legal heir certificate is wrong. Further, in the postmortem certificate, the age is mentioned as 54 years. Therefore, the Tribunal ought to have taken the age of the deceased as 49 years, as mentioned in the claim petition. The learned counsel further submitted that the notional income fixed by the Tribunal at Rs.7000/- per month for the accident which took place in the year 2019 is very meagre. The deceased was working as a coolie. The accident had taken place only while the deceased was unloading the paddy bags from the lorry. In view of the avocation of the



C.M.A. No.229 of 2022

deceased, the Tribunal ought to have fixed a higher notional income. For the above reasons, the learned counsel prayed for enhancement of compensation.

10. Per contra, the learned counsel for the second respondent submitted that the Tribunal had erred in awarding compensation under the Motor Vehicles Act. The accident had taken place during the course of employment and the Tribunal ought to have awarded compensation under the Employees Compensation Act. If the appellants have filed compensation under Employees Compensation Act, the appellants would have got Rs.6,06,601/- as compensation. In any event, the Tribunal had rightly taken the age as shown in the legal heir certificate for the purpose of computing loss of income. Neither the claim petition nor the postmortem certificate is based on any record. As regards the notional income, the learned counsel submitted that Rs.7,000/- is reasonable in the absence of any evidence to prove the income of the deceased and hence prayed for dismissal of the appeal.



C.M.A. No.229 of 2022

11. Heard the learned counsel appearing for the appellants as well as second respondent and perused the materials available on record.

12. The only issue involved in this appeal is whether the amount of compensation awarded by the Tribunal is just and reasonable.

13. Though it is contended by the learned counsel for the second respondent that Tribunal ought to have computed the compensation based on the Workmen's Compensation Act, the second respondent has not preferred any appeal challenging the finding with regard to applicability of provisions of the Motor Vehicles Act. Therefore, the only question involved in the instant appeal is with regard to quantum of compensation awarded by the Tribunal.

14. Admittedly, Ex.P11 – legal heir certificate produced on the side of the appellants would show that the deceased was aged 64 years. The age mentioned in other places i.e. claim petition and postmortem certificate are



C.M.A. No.229 of 2022

based on the information furnished by the appellants. However, it is seen that

Ex.P11 – legalheir certificate has been issued by the revenue officials and therefore the same has to be accepted. Hence, the Tribunal had rightly taken the age as 65 years, as mentioned in the legalheir certificate which cannot be faulted.

15. In so far as the quantum of compensation is concerned, it is seen that admittedly the accident took place while the deceased was working as a coolie and was unloading the paddy bags from the lorry. Therefore, the avocation of the deceased is proved. Considering the cost inflation index and the fact that the daily wages of coolie workers are also high at the relevant point of time, this court is of the view that the notional income of the deceased can be fixed at Rs.12,000/- per month. The multiplier applicable is 7. Thus, the compensation awarded by the Tribunal towards loss of income is calculated as follows -

$$12,000 \times 12 \times 7 \times 2/3 = 6,72,000/-$$



C.M.A. No.229 of 2022

The compensation awarded by the Tribunal under other heads are just and reasonable and hence the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified 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	3,92,028/-	6,72,000/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	1,20,000/-	1,20,000/-	Confirmed
	Total	5,42,028/-	8,22,000/-	Enhanced by Rs.2,79,972/-

16. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,42,028/- is hereby enhanced to Rs.8,22,000/- 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



C.M.A. No.229 of 2022

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 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.

02.08.2023

rgr

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1.Special District Judge for MACT Cases,
The Motor Accident Claims Tribunal,
Krishnagiri.

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



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C.M.A. No.229 of 2022

SUNDER MOHAN, J

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C.M.A. No. 229 of 2022

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