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CMA No. 2282 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2282 of 2023

1. Dhamayanthi
2. Dharmalingam
3. Tamilpriya

... Appellants

Versus

1. Mani

2. Oriental Insurance Co., Ltd.,
Kumar Complex, 1st Floor, 146,
West Car Street, Tiruchengode, Namakkal District.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 28.09.2022 made in M.C.O.P. No.83 of 2016 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge Court, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mr.EL Veera Ravindran (for R2)
R1-Dispensed with

J U D G M E N T

The claimants have preferred the instant appeal seeking



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enhancement of compensation.

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2. The appellants/claimants filed the claim petition stating that on 14.09.2015 at about 9.30pm, while the deceased was travelling in his two-wheeler in a public road, the bike belonging to the 1st respondent and insured with the 2nd respondent came in a rash and negligent manner and dashed against the two-wheeler of the deceased, 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. The 2nd respondent filed the counter stating that the accident took place only due to the negligence of the deceased and that in any case, the compensation claimed is excessive and prayed for dismissal of the claim petition.

4. Before the tribunal, the appellants/claimants examined PW1 and PW2 and marked Ex.P1 to P12. The 2nd respondent examined RW1 and marked Ex.R1 to Ex.R3.

5. The tribunal after taking into consideration the oral and



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documentary evidence, held that the accident took place only due to the rider of the two-wheeler insured with the 2nd respondent and directed the 2nd respondent to pay a sum of Rs.18,13,000/- as compensation to the appellants/claimants.

6. The learned counsel for the appellants/claimants submitted that though the appellants have established that the deceased was working as a Painter, the tribunal fixed a meagre notional income of Rs.8,000/- per month, which requires enhancement. Learned counsel further submitted that the appellants each are entitled to Rs.40,000/- towards loss of filial consortium/love and affection and the tribunal had not awarded any compensation under the said head.

7. Since the 1st respondent remained *ex parte* before the tribunal, the learned counsel for the appellants made an endorsement to dispense with the notice to the 1st respondent. Hence, notice to 1st respondent is dispensed with.

8. The learned counsel for the 2nd respondent-Insurance Company per contra submitted that the award of the tribunal is just and reasonable



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in the absence of any documentary evidence to prove the avocation and income of the deceased and therefore, the learned counsel prayed for dismissal of the appeal.

9. The only question in the instant appeal is whether the compensation awarded by the tribunal is just and reasonable?

10. On perusal of the records, it is seen that the appellants have examined PW1-mother of the deceased, who has deposed that the deceased was working as a painter and earned Rs.15,000/- per month. However, no document was filed to either prove the avocation or income of the deceased. Considering the age and avocation of the deceased and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income of the deceased at Rs.12,000/- per month. As the deceased was aged 21 years, the appellants are entitled to 40% enhancement towards future prospects i.e. Rs.12,000/- + Rs.4,800/- = Rs.16,800/-. Thus, the loss of dependency is computed as under:

$$\text{Rs.16,800/-} \times 12 \times 18 \times \frac{1}{2} = \text{Rs.18,14,400/-}$$

11. The tribunal has not awarded any amount under the head loss of filial consortium to parents and loss of love and affection to sister.



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Hence, a sum of Rs.80,000/- i.e. Rs.40,000/- to each of the appellants 1 and 2, is awarded under the head loss of filial consortium and Rs.40,000/- under the head loss of love and affection is awarded to the 3rd appellant.

12. The award under other heads are just and reasonable and the same are confirmed. Thus, the award of 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 dependency	12,09,600	18,14,400	Enhanced
2.	Loss of estate	16,500/-	16,500/-	Confirmed
3.	Funeral expenses	16,500/-	16,500/-	Confirmed
4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Medical expenses	5,65,055/-	5,65,055/-	Confirmed
6.	Loss of filial consortium to parents/appellants 1 and 2 @ Rs.40,000/- each	-----	80,000/-	Granted
7.	Loss of love and affection to 3 rd appellant	----	40,000/-	Granted
	Total Rounded off to	18,12,655/- 18,13,000/-	25,37,455/- 25,37,500/-	Enhanced by Rs.7,24,500/-

13. With the above modification, this Civil Miscellaneous Appeal



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is partly allowed and the compensation awarded by the Tribunal at Rs.18,13,000/- is hereby enhanced to Rs.25,37,500/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. Out of the modified compensation, the 1st appellant/mother is entitled to Rs.20,37,500/- and the 2nd appellant/father and 3rd appellant/sister are entitled to Rs.2,50,000/- each. 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 period of six (6) weeks from the date of receipt of copy of this Judgment. On such deposit, the appellants are permitted to withdraw the entire amount with interest and costs, less the amount if any, already withdrawn. The appellants are directed to pay the necessary court fee, if any, on the enhanced award amount. No costs.

27.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To
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1. The Motor Accidents Claims Tribunal,
Subordinate Judge,
Tiruchengode.
2. The Section Officer,
VR Section,
Madras High Court,
Chennai – 600 104.



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SUNDER MOHAN, J.

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