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CMA No. 2120 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2120 of 2023

1.K.Punitha

2.K.Karthikeyan

3.K.Kousalya

4.Minor K.Poovarasan

(Minor appellant represented by mother
and natural guardian 1st appellant K.Punitha)

... Appellants

Versus

1.The Manager,
Ford Motor Pvt.Ltd.,
Having office at No.1B, RMZ Millenia,
143, Dr.MGR Road, Perungudi,
Chennai.

2.The Manager,
ICICI Lombard General Insurance Company Ltd.,
Officers Line, Opp to Lakshmi Theatre,
Vellore.

(No relief sought against the 1st respondent
hence notice may be dispensed with)

... Respondents



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PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No. 130 of 2016 dated 09.07.2018 on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Court, Ranipet, Vellore.

For Appellants : Mr. M. Sivakumar.

For Respondents : Mr. P. Magesh for R2.

R1 – Dispensed with.

J U D G M E N T

The claimants have preferred the instant appeal seeking enhancement of compensation in the award passed by the Tribunal in M.C.O.P. No. 130 of 2016 dated 09.07.2018.

2.The claimants have filed the petition stating that on 14.02.2016 at about 5.00 p.m., while the deceased was riding a two wheeler in a public road, a car driven by its driver in a rash and negligent manner hit the deceased, as a result of which, the deceased sustained fatal injuries.

3.The first respondent filed a counter stating that the accident took place due to the rash and negligent driving of the deceased and hence, the appellants are not entitled to compensation.



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4.The second respondent filed a counter stating that the accident took place due to the negligent riding of the deceased; and that in any case, the compensation claimed by the appellants was excessive and prayed for dismissal of the appeal.

5.The appellants examined PW1 to PW4 and marked Ex.P.1 to Ex.P.13. The respondents examined RW1 and marked Ex.R.1 to Ex.R.3.

6.The Tribunal after taking into consideration the oral and documentary evidence held that the accident took place due to the rash and negligent driving of the driver of the car insured with the second respondent and directed the second respondent to pay a compensation of Rs.11,57,000/- to the appellants.

7.The learned counsel for the appellants submitted that though the appellants had established that the deceased was working as a Lorry driver cum JCB operator and was earning a monthly income of Rs.25,000/- through Ex.P.10, salary certificate, the Tribunal had fixed a meagre notional income of Rs.7,000/- per month. Further, the learned



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counsel submitted that the Tribunal had awarded a meagre sum of Rs.20,000/- under the head Loss of consortium and Loss of Love and Affection and no amount has been awarded under the head loss of estate. Hence, the learned counsel prayed for enhancement of compensation.

8. Notice to the first respondent has been dispensed with by the order of this Court dated 25.08.2023.

9. The learned counsel for the second respondent, per contra, submitted that the Tribunal was right in fixing the notional income as the income of the deceased was not proved by the appellants and submitted that the award of the Tribunal is just and reasonable and no interference is called for.

10. The only question that arises for consideration in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable.

11. On perusal of the records, it is seen that the appellants had established the fact that the deceased was a driver and they had examined



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PW2 employer of the deceased to prove the said fact. They had also marked Ex.P.11, driving license and Ex.P.10 salary certificate. From the above documents, it is clear that the appellants have established the avocation of the deceased. However, it is seen that the salary certificate was not corroborated by any other documents such as bank statement or appointment order. Therefore, the Tribunal was right in fixing the notional income. However, the Tribunal fixed a meagre sum of Rs.7,000/- per month as notional income. Considering the age, avocation and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.14,000/- per month. The deceased was aged 41 years at the time of the accident and hence, the appellants are entitled to 25% enhancement towards future prospects and the multiplier applicable is 14. Therefore, the loss of income would be $\text{Rs.14,000} + \text{Rs.3500/- (25\% of Rs.14,000)} = \text{Rs.17,500} \times 12 \times 14 \times \frac{3}{4} (\frac{1}{4}^{\text{th}} \text{ deducted towards personal expenses}) = \text{Rs.22,05,000/-}$. Further, the compensation awarded under the head Loss of consortium is meagre and the same is enhanced to Rs.40,000/-. Further, the appellants 2 to 4 are each entitled to Rs.40,000/- under the head Loss of Love and Affection and the same is enhanced to Rs.1,20,000/-. Since no amount has been awarded under the head Loss of Estate, Rs.15,000/- is awarded



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under the said head. The award under the other heads are just 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 Income	8,82,000	22,05,000	Enhanced
2.	Funeral expenses	15,000	15,000	Confirmed
3.	Loss of love and affection	20,000	1,20,000	Enhanced
4.	Loss of Consortium	20,000	40,000	Enhanced
5.	Medical Bills	2,18,000	2,18,000	Confirmed
6.	Transportation Charges	2,000	2,000	Confirmed
7.	Loss of Estate	---	15,000	Granted
	Total	11,57,000	26,15,000	Enhanced by Rs. 14,58,000/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,57,000/- is hereby enhanced to Rs.26,15,000/- 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 second respondent is directed to deposit the award amount now determined by this Court along with proportionate interest and costs, less the amount already deposited, if



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any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellants 1 to 3 are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn as per the apportionment fixed by the Tribunal. The share of the minor fourth appellant is directed to be deposited in any of the Nationalized Bank in a interest bearing Fixed Deposit till he attains majority and the first appellant is permitted to withdraw the accrued interest once in every six months. The appellants are directed to pay the necessary Court fee if any on the enhanced award amount. No costs.

25.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN, J

To

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1. The Motor Accidents Claims Tribunal,
II Additional District and Sessions Court,
Ranipet, Vellore.
2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.

C.M.A. No. 2120 of 2023

Dated: 25.09.2023