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C.M.A.No.474 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.474 of 2022

1.Thulasi

2.Manivel

...Appellants

Vs.

1.Suresh

2.The Manager,

Royal Sundaram General Insurance Company Ltd.,

Situated at No.1, Subramaniam Building,

2nd Floor, Club House Road,

Chennai 2.

...Respondents

(1st respondent remained exparte before the
Tribunal and hence, notice may be dispensed
with for 1st respondent)

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.07.2021 in M.C.O.P.No.334 of 2019 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Perambalur.

For Appellants : Mr.M.Lokesh

For Respondents : Ms.C.Harini for R2

No appearance for R1



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 30.07.2021 in M.C.O.P.No.334 of 2019 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Perambalur.

2. The appellants/claimants filed the claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one Selvaraj, who died in the accident that took place on 09.04.2019. According to the appellants, on the date of accident i.e., on 09.04.2019 at about 3.30 a.m., when the deceased was riding his two wheeler bearing registration No.TN 66 Z 8483 on Chennai to Tiruchy NH 45 road near Chinnaru Pirivu road, the driver of the car bearing registration No.TN 14 M 4378 belonging to the first respondent, drove the same in a rash and negligent manner without observing traffic rules and regulations, dashed behind the two wheeler of the deceased, as a result of which, the deceased sustained grievous injuries and died on the spot. Hence, the appellants filed the claim petition claiming compensation against the respondents.

3. The first respondent, who is the owner of the offending vehicle, remained ex-parte before the Tribunal.



4. The second respondent/Insurance Company filed a 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 the accident. The petition is bad for non-joinder of necessary parties i.e., owner and insurer of the two wheeler. The age, income and dependency of the deceased are denied. In any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellants examined two witnesses as P.W.1 and P.W.2 and marked 9 documents as Exs.P1 to P9. The second respondent/Insurance Company examined one witness as R.W.1 and marked three documents as Exs.R1 to R3.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to the rash and negligent driving by the driver of the car belonging to the first respondent and directed the second respondent being insurer of the offending vehicle to pay a sum of Rs.10,78,320/- as compensation to the appellants.



7. Aggrieved over the said award of the Tribunal, the appellants have filed the present appeal.

8. The learned counsel for the appellants submitted that the quantum of compensation awarded by the Tribunal is meagre. Though the appellants have established before the Tribunal that the deceased was working as a cooking master, the Tribunal had fixed the notional at Rs.7,800/- per month. The learned counsel submitted that in similar circumstances, this Court in C.M.A.No.2636 of 2022 had fixed the notional of the deceased as Rs.17,000/- per month for a collection manager. The learned counsel further submitted that the Tribunal erred in not awarding any compensation under the head of loss of filial consortium to the parents/appellants at Rs.40,000/- each and thus prayed for enhancement of compensation.

9. The learned counsel for the second respondent / Insurance Company submitted that the appellants have not produced any proof to show that the deceased was working as a cooking master and in the absence of any evidence, the Tribunal was justified in fixing the notional income at Rs.7,800/- per month. The learned counsel fairly submitted that the parents of the deceased/claimants are entitled to filial consortium and the compensation



awarded by the Tribunal under other heads are just and reasonable and prayed for dismissal of the appeal.

10. The short question involved in the instant appeal is whether the quantum of compensation awarded by the Tribunal is just and reasonable.

11. In the judgment relied on by the learned counsel for the appellants, the Hon'ble Division Bench of this Court in C.M.A.No.2636 of 2022 had fixed the notional income for a person who was working in a private concern as Collection Manager at Rs.17,000/- per month, for an accident which took place in the year 2019. In the instant case also, the accident took place in the year 2019. The Tribunal considering the oral evidence of P.W.1 and Ex.P8/ Visiting Card of the deceased, fixed the notional income at Rs.7,800/- per month, which is meagre. Considering the nature of job done by the deceased, the year of accident and judgment of this Court in C.M.A.No.2636 of 2022 and the facts and circumstances of the case, this Court is of the view that the notional income of the deceased can be fixed as Rs.15,000/- per month. Hence, the amount of compensation under the head loss of dependency is modified as follows: Rs.20,16,000/- (Rs.15,000/- + 6,000 [Rs.15,000/- X 40%] X 12 x 16 x ½). The Tribunal has not awarded any amount towards filial consortium to the



appellants. Hence, a sum of Rs.40,000/- each is awarded towards filial consortium to the appellants, who are the parents of the deceased. The amount of compensation awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. 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	10,48,320	20,16,000	Enhanced
2.	Loss of Estate	15,000	15,000	Confirmed
3.	Funeral expenses	15,000	15,000	Confirmed
4.	Loss of filial consortium	-	80,000	Granted
	Total	Rs.10,78,320/-	Rs.21,26,000/-	Enhanced by Rs.10,47,680/-

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,78,320/- is hereby enhanced to Rs.21,26,000/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) 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 2nd respondent/Insurance Company is



directed to deposit the enhanced award amount now determined by this Court i.e., Rs.21,26,000/- 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 share of the award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

31.07.2023

Index: Yes/No
Internet: Yes/No
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To

- 1.The Motor Accident Claims Tribunal /
Principal District Judge, Perambalur.
- 2.The Section Officer
VR Section, High Court of Madras.



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SUNDER MOHAN,J.

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