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CMA Nos. 609 & 295 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal Nos. 609 & 295 of 2022

1.Harichandran

2.Devaki

3.Minor Nandhini

(3rd Minor appellant is rep.by her father, NF
and Natural Guradian Harichandran 1st appellant) ... Appellants in
C.M.A. No. 609 of 2022

1.Sankar

2.Jayachithra ...Appellants in C.M.A. No.295 of 2022

Versus

1.M. Dhanapal

2.M/s.Iffco Tokio General Insurance Co. Ltd.,
Kingston Park 2nd floor,
No.19/1, Ramalinga Nagar,
Woriyur, Trichy – 620 003.

3.M.Periyasamy

4.The Branch Manager,
M/s.United India Insurance Co.Ltd.,
No.50-A Pallivasal Street,
Perambalur,
Policy No. 0920823116P109609968 .. Respondents in both the appeals



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COMMON PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. Nos. 675 of 2017 and 286 of 2018 dated 30.11.2021 on the file of the Motor Accidents Claims Tribunal Judge and Sessions Judge, Mahila Court, Perambalur.

For Appellants
(in both) : Ms. L. Meena for Mr. C. Vidhusan.

For Respondents
(in both) : Mr. S. Arunkumar for R2.
Mr. M.J. Vijayaraghavan for R4.
R1 & R3 - Exparte.

COMMON JUDGMENT

The claimants have preferred the instant appeals seeking enhancement of compensation in the common award passed by the Tribunal in M.C.O.P. Nos. 675 of 2017 & 286 of 2018 dated 30.11.2021. Since the deceased in both the cases died due to the same accident, the above appeals are taken up together for disposal. Parties are hereinafter referred as per their rank in the claim petitions for the sake of convenience.



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2.The claimants have filed the claim petitions stating that on 27.04.2017 at about 01.45 p.m., while Asai Rethinam (deceased in respect of C.M.A. No. 295 of 2022) was travelling as pillion rider in the two wheeler ridden by his friend one Pradheesh (deceased in respect of C.M.A. No. 609 of 2022) which was proceeding in a public road, a two wheeler belonging to the first respondent and insured with the second respondent came in a rash and negligent manner and dashed against the two wheeler of the deceased, as a result of which both the rider and the pillion rider sustained fatal injuries. The owner of the two wheeler ridden by the deceased was also impleaded along with the insurance company.

3.The first and third respondents remained ex parte before the Tribunal.

4.The second respondent filed a counter stating that the accident took place only due to the negligence of the deceased; and that in any case, the compensation claimed was excessive and prayed for dismissal of the appeals.



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WEB COPY 5.The fourth respondent filed a counter stating that the accident took place due to the negligence of the Hero Splender two wheeler insured with the second respondent herein.

6.Since the claim petitions were filed by the dependents of both the deceased who died in the same accident, both the claim petitions were taken up together by the Tribunal and disposed of by the common order. The claimants examined PW1 to PW3 and marked Ex.P.1 to Ex.P.15. The second respondent examined RW1 and marked Ex.R.1 to Ex.R.3.

7.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 rider of the two wheeler insured with the second respondent as well as on the deceased who rode the two wheeler and fixed 90% contributory negligence on the rider of the two wheeler insured with the second respondent and 10% contributory negligence on the deceased in respect of C.M.A. No. 609 of 2022 who rode the two wheeler and directed the second respondent to pay a compensation of Rs.7,86,000/- to the appellants in C.M.A. No. 295 of 2022 and a



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compensation of Rs.7,07,400/- to the appellants in C.M.A. No. 609 of 2022. The Tribunal has also exonerated third and fourth respondents who are the owner and insurer of the two wheeler ridden by the deceased.

8.The learned counsel for the claimants submitted that the award of the Tribunal is meagre in as much as the notional income fixed by the Tribunal at Rs.5,000/- in both the claim petitions is meagre which requires enhancement. Further, the learned counsel submitted that the appellants in both the claim petitions were not awarded compensation under the head Loss of love and affection. The learned counsel further submitted that the Tribunal erred in fixing 10% contributory negligence on the deceased (rider) in respect of C.M.A. No. 609 of 2022 and prayed for enhancement of compensation.

9.Since the first and third respondents remained ex parte before the Tribunal, the learned counsel for the claimants sought permission of this Court to dispense with the notice to the first and third respondents. Hence, notice to the first and third respondents is dispensed with.



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WEB COPY 10.Mr. S. Arunkumar, learned counsel for the second respondent submitted that both the deceased who are the rider and pillion rider were minors, the compensations awarded by the Tribunal is just and reasonable and no interference is called for.

11.Mr. M.J. Vijayaraghavan, learned counsel for the fourth respondent submitted that the award of the Tribunal fixing entire liability on the second respondent is reasonable and no interference is called for.

12.The questions that arises for consideration in the instant appeals are;

- (i)Whether the Tribunal was right in fixing 10% contributory negligence on the deceased in respect of C.M.A. No. 609 of 2022?
- (ii)Whether the compensations awarded by the Tribunal is just and reasonable.

13.As regards the first question, it is seen that in C.M.A. No. 609 of 2022, the rider of the two wheeler is the deceased. The deceased was aged 17 years at the time of the accident. Admittedly, he did not have



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any driving license. Hence, fixing of 10% contributory negligence on the deceased is justified and no interference is called for.

14.As far as C.M.A. No. 609 of 2022 is concerned, the Tribunal had fixed a notional income of Rs.5,000/-. The claimants had filed Ex.P.7, identity card to show that the deceased was a diploma student studying in a Polytechnic College. Considering the age, the year of the accident and the fact that the deceased was a student, this Court is of the view that the notional income of the deceased can be fixed at Rs.10,000/- Since the deceased was aged 17 years at the time of the accident, the appellants are entitled to 40% future prospects and the multiplier applicable is 18. Since the deceased was a bachelor, 50% has to be deducted towards personal expenses. Therefore, the compensation under the head Loss of Dependency would be Rs.10,000/- + 4,000 (40% of Rs.10,000) = Rs.14,000/- X 12 X 18 X 1/2 = Rs.15,12,000/-. The first two appellants would be entitled to Rs.40,000/- each under the head Loss of filial consortium and the third appellant would be entitled to Rs.40,000/- under the head Loss of Love and Affection. Thus, Rs.1,20,000/- is awarded under those heads. The award under the other heads are just and the same are confirmed. Thus, the award of the Tribunal is modified as



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follows;

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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	7,56,000	15,12,000	Enhanced
2.	Loss of filial consortium and loss of Love and Affection (Appellants 1 to 3)	---	1,20,000	Granted
3.	Loss of Estate	15,000	15,000	Confirmed
4.	Funeral Expenses	15,000	15,000	Confirmed
	Total	7,86,000	16,62,000	
	After deducting 10% contributory negligence	7,07,400/-	14,95,800/-	Enhanced by Rs.7,88,400/-

15.As far as C.M.A. No. 295 of 2022 is concerned, the pillion rider is the deceased. He was aged 19 years at the time of accident. He was also a diploma student studying in a Polytechnic College. The Tribunal had fixed Rs.5,000/- per month as notional income. Considering the age, the year of the accident and the fact that the deceased was a student, this Court is of the view that the notional income of the deceased can be fixed at Rs.10,000/- Since the deceased was aged 17 years at the



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time of the accident, the appellants are entitled to 40% future prospects and the multiplier applicable is 18. Since the deceased was a bachelor, 50% has to be deducted towards personal expenses. Therefore, the compensation under the head Loss of Dependency would be Rs.10,000/- + 4,000 (40% of Rs.10,000) = Rs.14,000/- X 12 X 18 X 1/2 = Rs.15,12,000/-. The appellants would be entitled to Rs.40,000/- each under the head Loss of filial consortium. Thus, Rs.80,000/- is awarded 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 Dependency	7,56,000	15,12,000	Enhanced
2.	Loss of filial consortium	---	80,000	Granted
3.	Loss of Estate	15,000	15,000	Confirmed
4.	Funeral Expenses	15,000	15,000	Confirmed
	Total	7,86,000	16,22,000	Enhanced by Rs.8,36,000/-.



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16. With the above modifications, these Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.7,07,400/- in respect of C.M.A. No. 609 of 2022 is hereby enhanced to Rs.14,95,800/- and the compensation awarded by the Tribunal at Rs.7,86,000/- in respect of C.M.A. No. 295 of 2022 is hereby enhanced to Rs.16,22,000/- 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 second respondent is directed to deposit the award amounts now determined by this Court along with proportionate 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 in C.M.A. No. 295 of 2022 and the appellants 1 and 2 in C.M.A. No. 609 of 2022 are permitted to withdraw their respective shares of the award amounts 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 third appellant in C.M.A. No. 609 of 2022 is directed to be deposited in an interest bearing Fixed Deposit till she attains majority and the first appellant is permitted to withdraw the accrued interest once in every six months. The appellants in both the appeals are directed to pay the



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necessary Court fee if any on the enhanced award amounts. No costs.

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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

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To

1. The Motor Accidents Claims Tribunal
Judge and Sessions Judge, Mahila Court, Perambalur.
2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.

C.M.A. Nos. 609 & 295 of 2022

Dated: 26.09.2023