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C.M.A.No.1481 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

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Parvathy (died)

- 1.Kaliammal
- 2.Kaliappan
- 3.Amudha
- 4.Mariappan
- 5.Govindasamy
- 6.Palaniammal
- 7.Jayaraman
- 8.Arul
- 9.Sathiyavani

... Appellants

Vs

- 1.P. Velusamy
- 2.United Indian Insurance Company Ltd.,
No.2, Bhuvaneswari Complex,
Dr.Sankaran Road,
Namakkal District – 637 001.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.06.2019 made in M.C.O.P.No.526 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Court (MACT), Dharmapuri.



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For Appellants : Mr.D.Rameshkumar
For Respondents : Mrs. R. Sree Vidhya, for R2
R1 – Ex parte

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 21.06.2019 made in M.C.O.P.No. 526 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Court (MACT), Dharmapuri.

2. The appellants filed M.C.O.P. No.526 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Court (MACT), Dharmapuri claiming a sum of Rs.20,00,000/- as compensation for the death of one Settu, who died in the accident that took place on 10.04.2018.

3. According to the appellants, on 10.04.2018 at about 02.40 pm, while the deceased was returning to Natham Village from Pagalpatti by walk, attempted to cross the road from East to West in the Dharmapuri –



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Salem main road near Pagalpatti, the driver of the TATA ACE vehicle bearing Registration No. TN-60-W-5387 drove the same in a rash and negligent manner and dashed against the deceased and caused the accident; that in the above accident; the said Settu sustained grievous injuries and died on the spot. Hence, the appellants filed claim petition claiming compensation against the respondents.

4. The first respondent remained ex-parte before the Tribunal.

5. The second respondent filed counter statement denying all the averments made by the appellants in the claim petition. According to the second respondent, the driver of the first respondent did not possess a valid driving license at the time of accident; and in any event, the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 7th appellant examined himself as PW1 and Sivalingam, eye-witness to the accident as PW2. Thirty five documents were marked as Ex.P.1 to Ex.P.35. On behalf of the respondent/Insurance



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Company, one Govindarajan was examined as RW.1 and three documents were marked as Ex.R1 to Ex.R3.

7. The Tribunal after considering the evidence and documents filed on the side of the appellants and respondent/Insurance Company, held that the accident occurred due to the rash and negligent driving by the driver of the first respondent as well deceased, fixed negligence in the ration 80:20 on the driver of the first respondent and deceased respectively and directed the second respondent to pay a sum of Rs.7,67,424/- as compensation to the appellants.

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

9. The learned counsel for the appellants submitted that the Tribunal erred in fixing 20% contributory negligence on the deceased in the absence of any evidence to suggest that the deceased contributed to the accident. The learned counsel further submitted that the appellants had established before the Tribunal that the deceased was a construction worker



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and was earning more than Rs.20,000/- per month; that the Tribunal erred in fixing a meagre notional income of Rs.8,000/- per month. That apart, the Tribunal had not awarded compensation for loss of love and affection to the appellants and therefore, prayed for enhancement of compensation.

10. Though notice has been served on the first respondent and his name has been printed in the cause list, none appeared.

11. The learned counsel for the second respondent per contra submitted that the award of the Tribunal is just and reasonable and there is no reason to interfere with the award. The Tribunal had taken the age of the deceased as 53 years in the absence of any evidence to establish the same. Further, the appellants have not proved the avocation and income of the deceased, in such circumstances, the notional income taken by the Tribunal is just and reasonable and prayed for dismissal of the appeal.

12. The points involved in the instant appeal are-

(i) Whether the Tribunal was right in fixing 20% contributory negligence on the deceased?



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(ii) Whether the quantum of compensation awarded

by the Tribunal is just and reasonable?

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13. From the materials on record, it is seen that the appellants examined PW.2 who was an eye witness to the accident. PW.2 had admitted in his cross examination that the deceased crossed the road from East to West to go to his Village in a National highway and that there was no pedestrian crossing provided at that place; and that there was no opening of the centre median to permit crossing by pedestrian. In the light of the above evidence, it is clear that the deceased also contributed to the accident and therefore, the Tribunal was right in fixing contributory negligence on the deceased. The finding of the Tribunal in fixing 20% contributory negligence on the deceased is just and reasonable and no interference is called for.

14. As regards compensation, this Court finds that PW.1 son the deceased had deposed that the deceased was working as a construction worker. However, no documentary proof was filed to establish the income of the deceased. Considering the age, avocation and year of the accident, this Court is of the view that it would be just and reasonable to fix the



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notional income as Rs.12,000/- per month. The appellants are entitled to 10% enhancement towards future prospects. The Tribunal, on the basis of Ex.P2/postmortem certificate, fixed the age of the deceased as 53 years. Though PW.1 in his deposition had stated the age of the deceased as 57 years. In the facts of the case, there is no infirmity in the said finding. Further, the second respondent has not challenged the said finding. Hence, the multiplier applicable is '11'. The deceased was survived by 9 dependants. Hence, 1/5 has to be deducted towards his personal expenses. Thus, the compensation under the head loss of income is calculated as follows:-

$12,000 + 1,200(12,000 \times 10\%) \times 12 \times 11 \times 4/5 = \text{Rs.}13,93,920/-$. Further, the appellants who are the children of the deceased are each entitled to Rs.40,000/- under the head loss of love and affection.

15. The compensation awarded by the Tribunal under other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.7,67,424/- to Rs.13,57,440/-, break-up as follows -

Sl.	Description	Amount	Amount	Award
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No		awarded by Tribunal (Rs)	awarded by this Court (Rs)	confirmed or enhanced or granted
1.	Loss of income	9,29,280/-	13,93,920/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of love and affection	-	3,60,000/-	Granted
	Total	9,59,280/-	17,83,920/-	
	Less 20% Contributory Negligence	1,91,856/-	3,56,784/-	Enhanced by Rs.6,59,712/-
	Net Compensation	7,67,424/-	14,27,136/-	

16. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,67,424/- is hereby enhanced to Rs.14,27,136/- together with interest at 7.5% per annum from the date of petition till the date of deposit. The appellants are not entitled for any interest for the delay period on the amount of Rs.6,59,712/- enhanced by this Court as per the order of this Court dated 12.06.2023, made in C.M.P.No.18854 of 2022 in C.M.A.SR.No.27150 of 2022. The second respondent / Insurance Company is directed to deposit the award amount, now determined by this Court along with interest and



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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 their share of 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.

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Index: Yes/No
Neutral Citation: Yes/No
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SUNDER MOHAN, J.

AT

To

- 1.The Motor Accident Claims Tribunal,
Special District Court (MACT), Dharmapuri.
- 2.The Section Officer,
VR Section,
High Court, Madras.

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