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C.M.A.No.1438 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1438 of 2023

1.Kalyani

2.Naveenkumar

..Appellants

Vs.

1.Mageshkumar

2.The Divisional Manager,
United India Insurance Company Ltd.,
Having Office at TKM Complex,
Katpadi Road,
Vellore – 4.

[No relief sought against the 1st respondent.
Hence, notice may be dispensed with]

..Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 12.02.2021 made in MCOP.No.955 of 2017 on the file of the Motor Accident Claims Tribunal, (I Additional District and Sessions Judge), Vellore.



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For Appellants : Mr.M.Sivakumar

For Respondents : Mrs.I.Malar for R2
R1 – *ex parte* before Tribunal

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 12.02.2021 made in M.C.O.P.No.955 of 2017 on the file of the Motor Accident Claims Tribunal, (I Additional District and Sessions Judge), Vellore.

2. The appellants filed M.C.O.P.No.955 of 2017 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Judge), Vellore, claiming a sum of Rs.41,00,000/- as compensation for the death of one Mani, who died in the road accident that took place on 28.08.2017.

3. The appellants are the wife and daughter of the deceased. According to the appellants, on 28.08.2017 at about 7.45 p.m., when the deceased Mani was riding bicycle on the left side of Thiruvalam to Ponnai Road at Gugayanallur Village a Crane Vehicle bearing



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Reg.No.TN-73-D-1683 came in the same direction in a rash and negligent manner and dashed against the deceased, ran over him and as a result of which, the deceased sustained grievous injuries in his head and all over the body and died on the spot. The deceased was working as a watchman and earning a monthly salary of Rs.22,000/-. Hence, the appellants filed a claim petition claiming compensation against the respondents.

4. The 1st respondent is the owner of the crane vehicle and he remained *ex parte* before the Tribunal. The 2nd respondent is Insurer of the offending vehicle.

5. The 2nd respondent filed counter statement denying all the averments made by the appellants and further stated that the deceased without noticing the upcoming vehicles had suddenly crossed the road, due to which the accident had occurred and hence, the 2nd respondent is not liable to pay compensation; that the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.



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6. Before the Tribunal, the 1st appellant examined herself as P.W.1 and one R.Puratchi, eye witness to the accident was examined as P.W.2. Nine documents were marked as Exs.P.1 to P.9. The respondents neither marked any documents nor examined any witness on their side.

7. The Tribunal, after considering the oral and documentary evidence, held that the accident had occurred due to the negligent driving by the driver of the 1st respondent and directed the 2nd respondent to pay a sum of Rs.8,12,000/- as compensation.

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 award of compensation is meagre, inasmuch as a very low sum was taken as notional income of the deceased. The Tribunal further rejected the Aadhar card filed by the appellants to prove the age of the deceased and instead took the age as stated in the post-mortem certificate for the



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purpose of computing the loss of income. Hence, the learned counsel prayed for enhancement of the compensation.

10. The 1st respondent remained *ex parte* before the Tribunal and the learned counsel for the appellants have made an endorsement to dispense with notice to the 1st respondent. Hence, notice to the 1st respondent is dispensed with.

11. The learned counsel for the 2nd respondent per contra submitted that the Tribunal had correctly fixed the age of the deceased as 56 years based on the post-mortem certificate. In the Aadhar card only year of birth is mentioned and hence the Tribunal rightly rejected the Aadhar card for the purpose of assessing the age of the deceased. Further the notional income taken by the Tribunal is reasonable and hence prayed for dismissal of the appeal.

12. The only question involved in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable.



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13. From the materials on record, it is seen that the accident is of the year 2017. The appellants have established that the deceased was working as watchman. Considering the avocation of the deceased, his age and the year of accident, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.12,000/- per month. The Tribunal had considered the age mentioned in the post-mortem certificate for the purpose of fixing the age of the deceased. This Court is of the view that the age mentioned in the post-mortem certificate can be taken into consideration, in the absence of any other evidence to prove the date of birth. However, in the instant case, the appellant produced the Aadhar card of the deceased, which mentions the year of birth. Merely because no date of birth is mentioned, the age mentioned in the Aadhar card cannot be rejected. The year of birth is shown as 1965 and hence this Court is of the view that the age of the deceased has to be determined on that basis. The deceased was aged about 52 years as per the Aadhar card. Therefore, the compensation has to be computed on the said basis and the appellants are entitled to 10% towards future prospects. Hence, the award under the head loss of income is computed as follows:



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= Rs.12,000/- + Rs.1,200/- (10% of monthly income)

= Rs.13,200/- x 12 x 11 (Aged 52 years) x 2/3

(1/3rd is deducted towards personal expenses)

= Rs.11,61,600/-.

14. The award under the head of loss of love and affection is enhanced to Rs.40,000/- and the other heads are confirmed. Thus, the total award amount is modified as follows:-

<i>Heads</i>	<i>Awarded by the Tribunal</i>	<i>Awarded in the appeal</i>
Loss of Income	Rs.7,12,800/-	Rs.11,61,600/-
Towards consortium	Rs.40,000/-	Rs.40,000/-
Loss of love and affection	Rs.25,000/-	Rs.40,000/-
Loss of estate	Rs.15,000/-	Rs.15,000/-
Funeral Expenses	Rs.15,000/-	Rs.15,000/-
Transport expenses	Rs.5,000/-	Rs.5,000/-
Total	Rs.8,12,800/-	Rs.12,76,600/-

15. Accordingly, this Civil Miscellaneous Appeal is **partly allowed** and the compensation awarded by the Tribunal is enhanced from Rs.8,12,800/- to Rs.12,76,600/- together with interest at 7.5% per annum from the date of petition till the date of deposit (Excluding the default period, if any). The 2nd respondent is directed to deposit the award



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amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight (8) weeks from the date of receipt of a 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

Internet :Yes/No

Neutral Citation :Yes/No

Speaking order/Non-Speaking order



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1.The Motor Accident Claims Tribunal,
I Additional District and Sessions Judge, Vellore.

2.The Section Officer,
VR Section, High Court,
Madras.



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SUNDER MOHAN, J.

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