



C.M.A.No.1210 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1210 of 2022

1.Latha
2.Rajesh
3.Dhanalakshmi

... Appellants

Vs

1.S.K. Gunaseelan

2.M/s. Reliance General Insurance Co. Ltd., TP Claim,
Legal Department, No.6, Haddows Road,
Nungambakkam, Chennai – 600 006.

3.M.L. Johnson

4.M/s. Chola mandalam MS General Insurance Co. Ltd.,
Shawla's Building, Legal Department, II Floor,
No.154, Thambu Chetty Street,
Chennai – 600 001.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.10.2021 made in M.C.O.P.No.5841 of 2018 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.



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For Appellants : Mr.Amar Dineshbhai Pandiya

For Respondents : Ms.C.Bhuvanasundari for R2
Mr.M.B.Gopalan, for R4
Assisted by Mr.B.Raghavan
R1 – Ex parte
No Appearance for R3

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 28.10.2021 made in M.C.O.P.No. 5841 of 2018 on the file of the Motor Accident Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai.

2. The appellants filed M.C.O.P. No.5841 of 2018 on the file of the Motor Accident Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai, claiming a sum of Rs.31,00,000/- as compensation for the death of one Marimuthu, who died in the accident that took place on 26.03.2018.

3. According to the appellants, on 26.03.2018 at about 23.30 hours, while the deceased Marimuthu was travelling as a Cleaner in Tata MGVL lorry bearing Registration No. TN-22-BK-6028, the Mahendra and



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Mahendra Van bearing Registration No.TN-19-AB-7361 which was coming in opposite direction, driven by its driver in a rash and negligent manner, hit against the lorry and caused the accident; that in the above said accident; the said Marimuthu sustained grievous injuries and died on the spot. Hence, the appellants filed claim petition claiming compensation against the respondents.

4. The first and third respondents 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; and stated that the accident did not take place due to the negligence of the insured vehicle and only due to the negligence of the vehicle insured with the fourth respondent as that in any event the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.



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6. The fourth respondent filed a counter stating that the FIR shows that the accident took place due to the negligence of the driver of the first respondent; vehicle insured with the second respondent and hence, they are not liable to pay compensation and that in any case, the claim is excessive and prayed for dismissal of the appeal.

7. The 2nd appellant examined himself as PW1 and one Mari, eye-witness to the accident as PW2 and marked Ex.P.1 to Ex.P.18. The respondent did not examine any witness or mark any document on their side.

8. The Tribunal after considering the evidence and documents filed on the side of the appellants, held that the accident occurred due to the rash and negligent driving by the driver of the first respondent; directed the respondents 1 and 2 to jointly and severally pay a sum of Rs.15,50,000/- as compensation to the appellants.

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



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10. The learned counsel for the appellant submitted that the award of compensation is meagre in as much as the notional income fixed by the Tribunal at Rs.10,000/- per month is less. The Tribunal ought to have seen that the accident took place in the year 2018 and the appellants have established that the deceased was working as a Cleaner in a lorry and earning more than Rs.15,000/- per month, besides daily batta at the rate of Rs.200/- and prayed for enhancement of compensation.

11. Since R1 remained ex parte before the Tribunal, the learned counsel for the appellants prayed for dispense with notice to R1. Hence, notice to R1 is dispensed with. Though notice has been served on the third respondent and his name is printed in the cause list, none appeared for him.

12. The learned counsel for the second respondent per contra submitted that the compensation fixed by the Tribunal is just and reasonable since the appellants have not established the avocation and income of the deceased. In the absence of any evidence, the Tribunal was right in fixing the notional income as Rs.10,000/- which itself is excessive and prayed for dismissal of the appeal.



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13. The only question in the instant appeal is-

Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

14. On perusal of the records, this Court finds that PW1, the son of the deceased, who is the second appellant has stated in his deposition that the deceased was working as a Cleaner in a lorry. The appellants have not produced any evidence to prove the income of the deceased. The accident took place in the year 2018. The deceased was aged 45 years at the time of accident. Considering the age, job of the deceased, year of the accident and the number of dependants, this Court is of the view that it would be just and reasonable to fix the monthly income of the deceased as Rs.13,000/- per month. The deceased is entitled to 25% towards future prospects. The multiplier applicable is '14'. Since there are three dependants, $1/3^{\text{rd}}$ has to be deducted towards his personal expenses. Thus, the award of compensation under the head loss of income is calculated as follows:-
 $13,000 + 3250(13,000 \times 25\%) \times 12 \times 14 \times 2/3 = \text{Rs.}18,20,000/-$.



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15. The compensation awarded by the Tribunal under other heads

are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.15,50,000/- to Rs.19,70,000/-, break-up as follows -

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	14,00,000/-	18,20,000/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Loss of consortium	1,20,000/-	1,20,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	15,50,000/-	19,70,000/-	Enhanced by Rs.4,20,000/-

16. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,50,000/- is hereby enhanced to Rs.19,70,000/- 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 / Insurance Company is directed to deposit the award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a



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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

AT

To

- 1.The Motor Accident Claims Tribunal,
Chief Judge, Court of Small Causes, Chennai.
- 2.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

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