



C.M.A.No.2693 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A. No.2693 of 2022

1.P.Elumalai
2.Gayathiri
3.E.Ranjith

... Appellants

Versus

1.P.Ravi
2.United India Insurance Company,
104-A, Peramanur Main Road,
Peramanur, Salem -7.

... Respondents

(R1 remained *ex-parte* before the Tribunal)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 24.09.2019 passed in M.C.O.P.No.262 of 2018, by the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.C.Suresh

For R2 : Mr.S.Arunkumar



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JUDGMENT

This appeal has been filed by the appellants/claimants challenging the compensation awarded by the Tribunal in M.C.O.P.No.262 of 2018, dated 24.09.2019.

2.The claim petition was filed stating that on 12.09.2017, at about 12.00 hours., the deceased was travelling as pillion rider in a motorcycle bearing Registration No.TN-30-BH-6078 ridden by the 1st appellant, who is the husband of the deceased. When they were travelling near Udayapatty bus stop, a bus bearing Registration No.TN-3-AH-3141 which came in a same direction driven by its driver in a rash and negligent manner, hit against the 1st appellant's motorcycle, due to which the deceased-wife of the 1st appellant sustained grievous injuries on her vital parts of the body and admitted in hospital. During the course of treatment, the deceased died on 01.12.2017, Thus, they are entitled for compensation.

3.The 1st respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal.



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4.The 2nd respondent/Insurance Company filed a counter denying all the averments made in the claim petition and stated that the deceased did not die due to the injuries sustained during the accident that took place on 12.09.2017, but due to her personal health problem and that is the reason why no post-mortem was conducted; that the claim petition was originally filed by the deceased for the injuries sustained by her in the said accident, however, the appellants have filed the present claim petition after her death; that the driver of the bus had driven the vehicle in a careful manner; that the 1st appellant tried to overtake the bus and invited the accident; that hence, the 2nd respondent is not liable to pay compensation to the appellants; and that in any case, the compensation claimed is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellants/claimants examined two witnesses and marked Ex.P.1 to Ex.P.15 on their side. The appellant/Insurance Company examined one witness on their side and marked Ex.R1 & Ex.X1. The letter from RTO was marked as Ex.C1, copy of renewal of permit and copy of registration certificate were



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marked as Exs.C2 and C3.

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6.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by the driver of the offending vehicle and directed the respondents 1 and 2 to jointly and severally pay a sum of Rs.18,65,536/-, as compensation to the appellants/claimants.

7.Aggrieved over the award passed by the Tribunal, the appellants/claimants filed the present appeal challenging the quantum of compensation.

8.Learned counsel for the appellants/claimants submitted that the award of compensation is meagre. The deceased had originally filed the petition claiming the compensation for the injury suffered by her. After her demise, the legal heirs filed the claim petition for her death. The Tribunal found the nexus between the death and the accident. However, the Tribunal fixed a meagre notional income of the deceased as Rs.5,000/- per month though the appellants established that the deceased



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was self-employed and was earning Rs.30,000/- per month. Therefore, learned counsel sought for enhancement of compensation and prayed for allowing the appeal.

9.The 1st respondent remained before the Tribunal and hence, learned counsel for the appellant made an endorsement to dispense with notice to the 1st respondent. Hence, notice to the 1st respondent is dispensed with.

10.Learned counsel for the 2nd respondent/Insurance Company per contra submitted that the Tribunal in the absence of any evidence to show that the deceased was gainfully employed, had rightly fixed the notional income at Rs.5,000/- per month. Therefore, no interference is called for and prayed for dismissal of the appeal.

11.The only question involved in the instant appeal is whether the notional income fixed by the Tribunal was just and reasonable?

12.It is seen from the records that except the evidence of P.W.1-



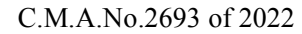
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husband of the deceased, the appellants have not produced any document either to prove the avocation or income of the deceased. Though P.W.1 had stated that the deceased was doing silver business, there is no proof to corroborate his evidence. However, the notional income fixed by the Tribunal is meagre. Considering the fact that the deceased was aged 44 years at the time of accident, the year of accident and the evidence on record, it would be just and reasonable to fix the notional income at Rs.10,000/- per month. Thus by adding 25% towards future prospect and deducting 1/3rd towards personal expenses of deceased, the compensation awarded under the head loss of dependency is modified as follows:

$$\text{Rs.12,500 (Rs.10,000 + 25\%)} \times 12 \times 14 \times \frac{2}{3} = \text{Rs.14,00,000/-}.$$

The Tribunal has not awarded any amount towards loss of love and affection and hence a sum of Rs.40,000/- each is awarded towards loss of love and affection. The amount 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 modified as follows:



13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.18,65,536/- is hereby reduced to Rs.26,85,480/- 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 2nd respondent 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 period of six (6)



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weeks from the date of a receipt of copy of this Judgment, jointly and severally. On such deposit the appellants/claimants are permitted to withdraw their respective shares as per the apportionment fixed by the Tribunal along with interest and cost, less amount already withdrawn, if any. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs. Consequently, connected miscellaneous petition is closed.

18.08.2023

rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The Motor Accident Claims Tribunal,
Special District Court, Salem.

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



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SUNDER MOHAN, J.

rst

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