IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1346 of 2023

1.Anjali

2.Suresh

3.Ramesh

4.Sendhamarai .. Appellants

Vs.

1.Arun

2.The Manager
United India Insurance Co. Limited
Third Party Claims Cub
No.134, Silingi Buildings
Greams Road, Chennai-600 006. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.09.2022 in MACTOP No.4981 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellants : Mr.K.Ayyadurai

For R2 : Mrs.I.Malar

J U D G M E N T

This Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 28.09.2022 in MCOP No.4981 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

2. The appellants filed MCOP No.4981 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai, claiming a sum of Rs.45,00,000/- as compensation for the death of one Parasuraman, who died in the accident that took place on 25.07.2019.

3. According to the appellants, on the date of accident, while the deceased Parasuraman was walking along North Fort Salai near R.A.Mandram, Chennai, the driver of the lorry bearing Registration No.TN 23 S 5455 belonging to the 1st respondent, drove the same in a rash and

negligent manner, dashed against the deceased, causing him grievous injuries and he died in the hospital on 26.07.2019.

4. The 1st respondent, owner of the lorry, remained exparte before the Tribunal.

5. The 2nd respondent/Insurance Company filed counter statement and denied all the averments made by the appellants in the claim petition. According to the 2nd respondent, the driver of the lorry did not possess driving license at the time of the accident. The accident had occurred due to negligence of the deceased. Therefore, the 2nd respondent is not liable to pay any compensation to the appellants. 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 1st appellant, wife of the deceased examined herself as PW1, one M.Venkatesh, an eye-witness to the accident was examined as P.W.2 & Mr.T.D.Raman, Assistant Administrative Officer,

TNEB, was examined as P.W.3 and 18 documents were marked as Exs.P1 to P18. The 2nd respondent examined the Sub-Inspector of Police, Traffic and Investigation, Chinthadripet, as R.W.1 and marked three documents as Exs.R1 to R3.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said vehicle to pay a sum of Rs.29,93,240/- as compensation to the appellants.

8. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

9.The learned counsel for the appellants submitted that the award of compensation by the Tribunal is meagre. The Tribunal while considering

Exs.P16 to P18, last pay certificate, pay particulars and attendance register respectively of the deceased produced on the side of the appellants, ought to have accepted the gross income earned by the deceased at Rs.32,136/-. But the Tribunal had erroneously taken the net income at Rs.28,402/-. The learned counsel further submitted that since there are four claimants, the Tribunal ought to have deducted 1/4th instead of 1/3rd towards personal expenses and therefore, prayed for enhancement of compensation awarded by the Tribunal.

10. The learned counsel for the 2nd respondent/Insurance Company submitted that Exs.P16 to P18 marked on the side of the appellants show that the take home salary of the deceased was Rs.28,402/- and hence, the Tribunal was right in fixing the said amount as income. The learned counsel further submitted that the Tribunal was right in deducting 1/3rd towards personal expenses, as the appellants 2 & 3 are married sons of the deceased and they cannot be treated as dependants. The award of compensation by the Tribunal is just and reasonable and it did not call for any interference and prayed for dismissal of the appeal.

11. Heard the learned counsel for the appellants and the learned counsel for the 2nd respondent and perused the entire materials on record.

12. The only issue involved in this appeal is whether the compensation awarded by the Tribunal is just and reasonable. Admittedly, Exs.P16 to P18, the documents produced on the side of the appellants show that the gross income of the deceased was Rs.32,136/- per month. As rightly pointed out by the learned counsel for the appellants the Tribunal ought to have taken the said amount as income of the deceased. Therefore, this Court is of the view that the loss of income has to be computed by taking Rs.32,136/- as monthly income of the deceased. The deceased was aged 55 years at the time of the accident. The Tribunal was right in granting 15% enhancement towards future prospects and applied multiplier '11'.

13. Further this Court finds that P.W.1 the wife of the deceased had admitted in her evidence that the appellants 2 & 3 are married sons of the deceased. In such view of the matter, this Court is of the view that they

cannot be treated as dependants of the deceased. Hence, deduction of 1/3rd towards personal expenses of the deceased is just and reasonable and no interference is called for. Further, while calculating loss of income, Income Tax payable by the deceased also has to be reduced. The Tribunal failed to deduct Income Tax. The accident has occurred on 25.07.2019. During the financial year 2019-2020, upto Rs.2,50,000/-, there is nil tax. Thus, the calculation for arriving annual income after deducting Income Tax is as follows :-

Monthly salary of the deceased	...	Rs.32,136.00
15% enhancement towards future prospects	...	Rs.4,820.40
		Rs.36,956.40
Annual income (36,956.40 X 12)	...	Rs.4,43,476.80 rounded off to Rs.4,43,477/-

Income Tax Slab for financial year 2019-2020

Upto Rs.2,50,000/-	-	Nil
From Rs.2,50,001/- to Rs. 5,00,000/- (5%)		

[Rs.4,43,477/- (-) 2,50,000/- X 5%]
Rs.1,93,477/- X 5% - Rs.9,673.85

Annual income after deducting income tax
(Rs.4,43,477/- (–) Rs.9,673.85) - Rs.4,33,803.15 rounded off to Rs.4,33,803/-

Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.31,81,222/- (Rs.4,33,803/- X 11 X 2/3). Award of compensation by the Tribunal under the other heads are just and reasonable and they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified 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 dependancy	28,03,240/-	31,81,222/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Loss of consortium	1,60,000/-	1,60,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	**29,93,240/-**	**33,71,222/-**	**Enhanced by Rs.3,77,982/-**

14. With the above modification, this Civil Miscellaneous Appeal is

partly allowed and the compensation awarded by the Tribunal at Rs.29,93,240/- is hereby enhanced to Rs.33,71,222/- 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/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 period of six weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellants are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn, on the basis of the apportionment fixed by the Tribunal. No costs.

28.07.2023

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 Accident Claims Tribunal
   Chief Judge, Small Causes Court
   Chennai.

2. The Section Officer
   V.R.Section
   High Court, Chennai.

C.M.A.No.1346 of 2023

Dated: 28.07.2023