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C.M.A.No.824 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.824 of 2022

1.Pasavachari
2.Basamma

...Appellants/Petitioners

Vs.

1.Vathanavadi
2.The Manager,
Shriram General Insurance Co.Ltd.,
E-8 RIICO Industrial Area, Sitapura,
Jaipur, Rajasthan – 302022.
Its Branch at, 2nd Floor, Shanthi Nagar,
Opp.to.CSI Church, Denkanikottai Road,
Hosur – 635 109.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award in Judgment and Decree dated 05.10.2021 made in M.C.O.P.No.1001 of 2020 on the file of the Motor Accident Claims Tribunal and Special District Court, Krishnagiri.



C.M.A.No.824 of 2022

For Appellants : Mr.SP.Yuaraj

For Respondents : R1-Exparte
Mrs.V.Pushpa for R2.

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 05.10.2021 made in M.C.O.P.No.1001 of 2020 on the file of the Motor Accident Claims Tribunal, Special District Court for Motor Accident Claims Cases, Krishnagiri.

2. The appellants filed M.C.O.P. No.1001 of 2020 on the file of the Motor Accident Claims Tribunal, Special District Court for Motor Accident Claims Cases Krishnagiri claiming a sum of Rs.60,00,000/- as compensation for the death of one Amaresh, who died in the road accident that took place on 29.05.2020.

3. According to the appellants, on 29.05.2020 at 18.30 hours, when the deceased Amaresh was riding a two-wheeler bearing Regn.No.TN-70-AA-8582 in Berigai to Eluvalapalli road near Store Rajappa's Land, a milk



C.M.A.No.824 of 2022

van bearing Reg.No.TN-67-K-3118, driven by its driver-cum-owner in the opposite direction in a rash and negligent manner, dashed against the two-wheeler and caused accident. In the accident, the said Amaresh sustained grievous injuries and died in the hospital. The deceased was aged 26 years at the time of the accident and was earning Rs.25,000/- per month. Hence, the appellants filed a claim petition claiming compensation against the respondents.

4.The 1st respondent remained ex-parte before the Tribunal.

5. The 2nd respondent/Insurance Company filed a counter statement denying all the averments made by the appellants in the claim petition and stated that the accident did not occur due to the negligent driving by the driver-cum-owner of the van; that the driver of the van did not have a valid driving license at the time of the accident; that the vehicle of the first respondent was not insured with them. The second respondent also denied the age, occupation and health condition of the deceased and stated that in any



C.M.A.No.824 of 2022

event, the total compensation claimed by the appellants are highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellants examined two witnesses as P.W.1 and P.W.2 and marked seventeen documents as Exs.P.1 to P.17. The respondents neither marked any document nor examined any witness.

7. The Tribunal after considering the oral and documentary evidence held that the accident occurred due to rash and negligent driving by the 1st respondent, driver-cum-owner of the milk van and directed the second respondent being the insurer of the offending vehicle to pay a sum of Rs.25,70,354/- as compensation to the appellants.

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



C.M.A.No.824 of 2022

9. Learned counsel for the appellants submitted that though the appellants have established that the deceased was working as a carpenter at the time of accident and was earning Rs.25,000/- per month, the Trial Court had taken the notional income as Rs.9,000/- per month, which is meagre. The learned counsel further submitted that considering the year of the accident and the avocation, the Tribunal ought to have fixed a higher notional income and hence, prayed for enhancement of compensation.

10. First respondent remained ex-parte before the Tribunal and the learned counsel for the appellants made an endorsement to dispense with notice to the first respondent. Hence, notice to the first respondent is dispensed with.

11. Learned counsel for the second respondent, per contra, submitted that the appellants have neither established avocation nor the income of the deceased, in such circumstances, the Tribunal was right in fixing the notional income as Rs.9,000/- per month; that there is no reason to interfere in the award and prayed for dismissal of the above appeal.



C.M.A.No.824 of 2022

12. Heard the learned counsel appearing for the appellants as well as the second respondent and perused the materials available on record.

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

14. From the materials on record, it is seen that the appellants have examined P.W.1/father of the deceased to show that the deceased was working as a carpenter. However, they have not produced any documentary proof to either prove the income or the avocation of the deceased. In the Judgment relied on by the learned counsel for the second respondent in ***Mythili and others vs. A.Lakshmi and another*** reported in ***2018 SCC online Mad 3504***, this Court had taken the notional income for the carpenter as Rs.12,000/- per month, for an accident which took place in the year 2015. But, considering the fact that the deceased was working as carpenter, the year of the accident and the age of the deceased, this Court is of the view that it would be just and reasonable to fix Rs.15,000/- per month as notional income



C.M.A.No.824 of 2022

of the deceased. The deceased was aged 26 years at the time of the accident and hence, the appellants are entitled to enhancement of 40% towards future prospects and the multiplier applicable is 18. Since the deceased died as bachelor, half of his income has to be deducted towards his personal expenses. Thus, the compensation awarded under the head Loss of Dependency is modified as follows:-

$$\text{Rs. } 15,000 + 6000 (40\% \times 15000) \times 12 \times 18 \times 1/2 = 22,68,000/-$$

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.25,70,354/- to Rs.34,77,554/-, 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	13,60,800/-	22,68,000/-	Enhanced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed



C.M.A.No.824 of 2022

4.	Loss of Consortium (Appellants 1 and 2)	80,000/- (40,000X2)	80,000/-	Confirmed
5.	Medical Bill	10,99,554/-	10,99,554/-	Confirmed
	Total	25,70,354/-	34,77,554/-	Enhanced by Rs.9,07,200/-

16. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.25,70,354/- is hereby enhanced to Rs.34,77,554/- together with interest at the rate of 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 period of six (6) 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



C.M.A.No.824 of 2022

any, on the enhanced award amount. No costs.

WEB COPY

09.08.2023

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Index: Yes/No

Neutral Citation: Yes / No

To

1. The Motor Accident Claims Tribunal, Chennai
(In the Chief Court of Small Causes, Chennai – 104).
2. The Section Officer,
VR Section,
High Court,
Madras.

SUNDER MOHAN, J

9/10



WEB COPY



C.M.A.No.824 of 2022

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C.M.A. No. 824 of 2022

09.08.2023

10/10