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C.M.A.No.700 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.700 of 2023

1.S.Mani,
2.S.Suganya,
3.S.Kannan (Minor),
S/o. Late Sundarasu,
(Represented by his Mother and Next Friend 1st Appellant)
... Appellants

Versus

1.Veerasley
2.The New India Assurance Co. Ltd.,
No.232, Bombay Mutual Building,
6th Floor, N.S.C. Bose Road,
Chennai – 600 001.
... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 09.12.2022 passed in M.C.O.P. No.2369 of 2018, on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellants	: Mr.R.Nalliyappan
For R1	: No Appearance
For R2	: Mr.P.Kandasamy



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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.2369 of 2018, dated 09.12.2022.

2.The claim petition was filed stating that on 18.03.2018 at 12.20 hours, when the deceased was riding the motorcycle bearing Registration No.TN 07 CA 6426 at Ekkattuthangal Kasi Theatre over bridge service road, near Metro Train pillar No.47 & 48, another two wheeler bearing Registration No. TN 09 BS 6291 came in a rash and negligent manner and dashed against the deceased, due to which the deceased sustained grievous injuries and succumbed to the injuries. Thus, the appellants are entitled for compensation.

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

4.The 2nd respondent/Insurance Company filed counter denying all the averments made in the claim petition and stated that the rider of the offending vehicle did not possess valid driving license at the time of



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accident. Hence, the 2nd respondent is not liable to pay compensation to the appellants. In any case, the compensation claimed is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellants examined two witnesses and marked Ex.P.1 to Ex.P.11 on their side. On behalf of the 2nd respondent/Insurance Company, R.W.1 was examined and Ex.R1 and R2 were marked.

6.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent, who is minor and directed the 2nd respondent being the insurer of the offending vehicle, to pay a sum of Rs.16,65,500/- as compensation to the appellants/claimants, with liberty to recover the same from the 1st respondent for violation of policy conditions.

7.Aggrieved over the award passed by the Tribunal, the appellants/claimants filed the present appeal seeking for enhancement of compensation.



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8.Learned counsel appearing for the appellants/claimants submitted that the Tribunal had awarded a meagre compensation by fixing a notional income of Rs.11,500/- per month, although the appellants have established that the deceased was working as a cook in a foreign country. Therefore, he prayed that the compensation awarded by the Tribunal has to be enhanced.

9.Per contra, the learned counsel for the 2nd respondent/Insurance Company submitted that the appellants had not produced any document either to prove the avocation or the income of the deceased. Except Ex.P7-copy of the passport, nothing has been produced to prove that the deceased was employed abroad. In the absence of any evidence, the Tribunal was right in fixing the notional income of Rs.11,500/- per month and prayed for dismissal of the appeal.

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



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11.The only question arises in the instant appeal is whether the quantum of compensation awarded by the Tribunal is just and reasonable?

12.From the materials on record, it is seen that the Tribunal had fixed the notional income of the deceased as Rs.11,500/- per month. The appellants examined PW.1 – wife of the deceased to prove that the deceased was working as a cook in a foreign country and was earning Rs.20,000/- per month. However, no document has been filed to corroborate the oral evidence of P.W.1. Therefore, the Tribunal was right in fixing the notional income. However, this Court is of the view that the notional income fixed by the Tribunal is meagre. Considering the age of deceased, his avocation, number of dependants and the year of the accident, this court is a view that it would be just and reasonable to fix Rs.15,000/- per month as notional income of the deceased. The deceased was aged 50 years at the time of accident. By applying multiplier 13, granting 25% enhancement towards future prospects and deducting 2/3rd towards personal expenses, the dependency is calculated as follows:

$$\text{Rs.18,750 (15000 X 25\%)} \times 12 \times 13 \times 2/3 = \text{Rs.19,50,000/-}.$$



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The award under other heads are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	14,95,000	19,50,000	Enhanced
2.	Loss of Estate	16,500	16,500	Confirmed
3.	Funeral Expenses	16,500	16,500	Confirmed
4.	Loss of Consortium	1,32,000	1,32,000	Confirmed
5.	Transportation Expenses	5,500	5,500	Confirmed
	Total	16,65,500	21,20,500	Enhanced by Rs.4,55,000/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,65,500/- is hereby enhanced to Rs.21,20,500/- 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



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period of six (6) weeks from the date of a receipt of copy of this

Judgment at the first instance and thereafter, recover the same from the 1st respondent. On such deposit, the appellants 1 and 2 are permitted to withdraw their respective shares of the award amount along with interest and costs, less the amount if any, already withdrawn. The share of the minor 3rd appellant is directed to be deposited in any one of the Nationalised Bank, till the minor attains majority. The 1st appellant-mother of the 3rd appellant is permitted to withdraw the accrued interest once in three months. 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

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The Motor Vehicle Accident Tribunal,
IV Small Causes Court, Chennai.

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



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SUNDER MOHAN, J.

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