



C.M.A.No.686 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

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1.Chellandi
2.Palaniammal
3.Sellamma

...Appellants/Petitioners

Vs.

1.R.Sathish

2.Reliance General Insurance Company Ltd.,
Shri Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem – 636 004.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.44 of 2017, dated 07.02.2019, on the file of the Motor Accidents Claims Tribunal, (II Additional District Court, Salem).



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For Appellants : M/s.M.Mohamed Riyaz

For Respondents : No Appearance for R1
M/s.G.Sukumari for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants challenging the quantum of compensation granted by the Tribunal in the award dated 07.02.2019 made in M.C.O.P.No.44 of 2017 on the file of the Motor Accident Claims Tribunal, (II Additional District Court) Salem.

2. The appellants filed M.C.O.P.No.44 of 2017 on the file of the Motor Accident Claims Tribunal, (II Additional District Court) Salem claiming a sum of Rs.25,00,000/- as compensation for the death of one Govindan, who died in the road accident that took place on 26.06.2016.

3. According to the appellants, on 26.06.2016 at about 7:00 AM, when the deceased was riding his Hero Honda Splendor Plus motor-cycle bearing registration No.TN 52 J 4780 from Konganapuram to Kallipatti, the offending



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vehicle Hero Honda Splendor Plus bearing Reg.No.TN 52 C 3405, came in a rash and negligence manner and dashed behind the vehicle of the deceased.

As a result, the deceased fell down and sustained injuries and died at the hospital. The deceased was working as a lorry driver and hence, he was entitled to compensation of Rs.25,00,000/-. Thus, the appellants filed 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 in the claim petition. They stated that the deceased alone rode the motorcycle in the middle of the road without observing traffic rules and invited the accident; that hence, the 2nd respondent is not liable to pay compensation to the appellants; and that the petition was not maintainable since the owner and insurer of the vehicle of the deceased were not impleaded in the claim petition. The 2nd respondent also denied the age, avocation, income of the deceased and nature of injuries sustained in the



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accident; and stated that in any event, the total compensation claimed by the appellants are highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st appellant examined himself as P.W.1 and one Satkthivel/eye-witness as P.W.2. Six documents were marked as Exs.P.1 to P.6. The second respondent neither marked any document nor examined any witness on their side.

7. 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 riding by the rider of the offending vehicle and directed the respondents to jointly and severally pay a sum of Rs.16,55,500/- as compensation to the appellants.

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



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9. The learned counsel for the appellants submitted that the Tribunal failed to award compensation under the head loss of love and affection to the appellants. The learned counsel further submitted that the notional income fixed by the Tribunal Rs.12,000/- per month is also meagre. Hence, he prayed for enhancement of compensation.

10. Though notice has been served on the first respondent, there is no representation for the first respondent either in person or through counsel.

11. The learned counsel for the second respondent/Insurance Company per contra, submitted that since the appellants had not established the avocation and income of the deceased by any documentary evidence, the notional income fixed by the Tribunal is just and need not to be interfered with. However, the learned counsel for the second respondent fairly submitted that the appellants are entitled to loss of love and affection at Rs.40,000/- each.



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

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

14. This Court is of the view that in the absence of any evidence to establish the monthly income of the deceased, the notional income of Rs.12,000/- fixed by the Tribunal for the deceased who was working as a lorry driver for the accident which took place in the 2016 is reasonable and need not be interfered with. However, this Court finds that the Tribunal had not awarded compensation under the head Loss of Love and Affection to the three appellants. Hence, this Court awards a sum of Rs.1,20,000/- (Rs.40,000/- each) as compensation under the head Loss of Love and Affection to the appellants.



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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.16,55,500/- to Rs.17,75,000/-, break-up 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	16,12,800/-	16,12,800/-	Confirmed
2.	Medical Bills	12,700/-	12,700/-	Confirmed
3.	Funeral Expenses	15,000/-	15,000/-	Confirmed
4.	Loss of Estate	15,000/-	15,000/-	Confirmed
5.	Loss of Love and affections (Rs.40,000/- X 3)	---	1,20,000/-	Granted
	Total	16,55,500/-	17,75,000/-	Enhanced by Rs.1,20,000/-

16. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,55,500/- is hereby enhanced to Rs.17,75,500/- together with interest at



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7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The respondents are jointly and severally 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 four (4) 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 any, on the enhanced award amount. No costs.

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Index: Yes/No

Neutral Citation: Yes / No



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Copy to

1. The Motor Accident Claims Tribunal,
II Additional District Court, Salem.
2. The Section Officer,
VR Section,
High Court,
Madras.



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SUNDER MOHAN, J

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