



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.07.2023

Coram

The Honourable Mr.Justice SUNDER MOHAN

C.M.A.No.1537 of 2023

1.R.Ramani

2.R.Ramakrishnan

...Appellants

Versus

1.A.Gopi

2.The Royal Sundaram General Insurance Co. Ltd.,
Having its Office at New No.18 & 20, 4B, 4th Floor,
'A' Block, Meenakampala Arcade,
Sir Theyagaraya Road, T.Nagar,
Chennai – 600 017.

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying to enhance the award dated 25.02.2022 made in M.C.O.P.No.276 of 2018 on the file of the Motor Accident Claims Tribunal (In the Court of the II Additional District and Sessions Judge, Tiruvallur at Poonamallee).

For Appellants : Ms.Sunithi Abirami
for M.Malar

For Respondent – 2 : Mr.G.Vasudevan



WEB COPY



JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellants/claimants seeking to enhance the compensation awarded by the Motor Accident Claims Tribunal (In the Court of the II Additional District and Sessions Judge, Tiruvallur at Poonamallee) in M.C.O.P.No.276 of 2018 vide award dated 25.02.2022.

2. The brief facts of the case are as follows:

On 10.07.2018, at about 1.00 p.m, when one Vignesh was riding as a pillion rider in the motorcycle bearing Registration No.TN 13 H 9361 on Poonamallee High Road, Pallikuppam, the first respondent's Tanker Lorry bearing Registration No.TN 20 BW 7616 driven by a driver coming from West to East direction in a rash and negligent manner hit the said motorcycle, thereby accident had occurred. Due to the accident, the said Vignesh had sustained multiple grievous injuries. The said Vignesh was admitted in the Government Hospital, Chennai – 600 003 for treatment, but, despite treatment, he had died in the Hospital on the very same day. Aggrieved over the death of said Vignesh, his mother and father (appellants/claimants) had filed a claim petition in M.C.O.P.No.276 of 2018



against the first respondent (owner of the offending vehicle) and the second respondent (insurer of the offending vehicle), claiming a sum of Rs.20,00,000/- as compensation for the death of their son Vignesh.

3. The second respondent/Insurance Company (insurer of the offending vehicle) had filed its counter statement in M.C.O.P.No.276 of 2018 denying all the averments made by the appellants/claimants in the Claim Petition. The accident occurred only due to the negligent act of the rider of the motorcycle who drove the vehicle without following the traffic rules, suddenly took 'U' turn from west to north, fell down due to imbalance, hit against the road divider and sustained injuries. Hence, the second respondent is not liable to pay compensation to the claimants and prayed for dismissing the claim petition.

4. Before the Tribunal, on the side of the appellants/claimants, in order to prove the averments in the claim petition, the first appellant examined herself as P.W.1 and one other witness was examined as P.W.2 and 11 documents were marked as Exs.P1 to P11. On the side of the respondents, one witness was examined as R.W.1 and three documents were marked as Exs.R1 to R3.



WEB COPY

5. On an appreciation of the oral and documentary evidence produced before it, the Tribunal arrived at the conclusion that the accident had occurred due to the rash and negligent driving of the driver who drove the first respondent's Tanker Lorry and hence, both the first respondent (owner of the offending vehicle) and the second respondent (insurer of the offending vehicle) are jointly and severally liable to pay the compensation to the appellants/claimants. Accordingly, the Tribunal held that the respondents 1 & 2 are jointly and severally liable to pay a sum of Rs.13,19,600/- as compensation to the appellants/claimants and the second respondent is liable to pay the award amount with accrued interest thereon at 7.5% per annum from the date of numbering of the petition till the date of realization.

6. Ms.Sunithi Abirami, learned counsel for the appellants/claimants submitted that the compensation awarded by the Tribunal is meagre, particularly, the amount awarded towards Loss of Dependency is not reasonable. She further submitted that in the present case, the accident took place in the year 2018. At the time of accident, the deceased Vignesh was 24 years old and he was working as a Sales Man in a private concern and earning a sum of Rs.15,000/- as monthly salary which were also clearly stated in the claim petition. However, without considering the same, the



Tribunal had fixed the notional income of the deceased Vignesh as only Rs.8,000/- per month and awarded Rs.12,09,600/- towards Loss of Dependency. Hence, the learned counsel prayed this Court to enhance the amount awarded by the Tribunal towards Loss of Dependency.

7. The first respondent remained *ex-parte* before the Tribunal. Hence, notice to the first respondent is dispensed with.

8. Mr.G.Vasudevan, learned counsel appearing for the second respondent/Insurance Company submitted that in the present case, at the time of accident, the deceased Vignesh was under the influence of alcohol which could be seen from Ex.R1, Accident Register of the deceased Vignesh. Further, the learned counsel submitted that the overall compensation awarded by the Tribunal is just and reasonable and the same need not to be enhanced.

9. However, the learned counsel for the appellants/claimants refuted that at the time of accident, the deceased Vignesh was not under the influence of alcohol as stated by the learned counsel for the second respondent/Insurance Company. She submitted that Ex.P5, Post-Mortem



Report of the deceased Vignesh clearly shows that during post-mortem examination, no smell of alcohol was found in the dead-body of deceased Vignesh.

10. Heard the learned counsel for the appellants/claimants and the learned counsel appearing for the second respondent/Insurance Company.

11. As far as fixation of negligence is concerned, though it is mentioned in Ex.R1, Accident Register that alcohol smell was found in the breath of the deceased Vignesh, the second respondent/Insurance Company failed to establish before the Tribunal that the deceased Vignesh was under the influence of alcohol at the time of accident. Since there was no evidence to prove that the negligence was on the part of the deceased Vignesh, the Tribunal fixed the negligence on the driver who drove the first respondent's Tanker Lorry. Further, the Tribunal had held in its findings that during post-mortem, no smell of alcohol was found in the dead body of the deceased Vignesh and Ex.P5, Post-Mortem Report also did not reveal the consumption of alcohol by the deceased Vignesh. The second respondent has not challenged the said finding of the Tribunal before this Court. Hence, I am of the opinion that there is no need to interfere with the finding of the



Tribunal with regard to the fixation of negligence.

WEB COPY

12. The only issue to be decided in this case is that whether the quantum of compensation awarded by the Tribunal is just and reasonable or not?

13. In the present case, the appellants/claimants had filed a claim petition before the Tribunal, seeking a sum of Rs.20,00,000/- as compensation for the death of their son viz., Vignesh who died in a road accident on 10.07.2018 and the Tribunal awarded them a sum of Rs.13,19,600/- as compensation. However, the appellants/claimants have preferred this appeal for enhancement of compensation.

14. So far as quantum of compensation is concerned, the learned counsel for the appellants/claimants submitted that the deceased Vignesh was earning Rs.15,000/- as monthly salary when he was alive, but, without considering the same, the Tribunal had fixed the monthly income of the deceased as Rs.8,000/-. Therefore, the learned counsel requested this Court to consider the monthly income earned by the deceased Vignesh (son of the appellants/claimants) and enhance the amount awarded towards Loss of



Dependency.

WEB COPY

15. From a perusal of the records placed before this Court, it is seen that before the Tribunal, P.W.1, first appellant (mother of the deceased Vignesh) deposed that her deceased son Vignesh was working as a Salesman in a private concern. However, the appellants/claimants did not produce any documents to establish the actual monthly income of their deceased son Vignesh.

16. Considering the year of accident, age and profession of the deceased Vignesh (son of appellants/claimants) at the time of accident and also, monthly income earned by the deceased Vignesh when he was alive, this Court feels that it would be just and reasonable to fix Rs.13,000/- as notional monthly income of the deceased Vignesh. Accordingly, a sum of Rs.12,09,600/- awarded by the Tribunal towards Loss of Dependency is enhanced as Rs.19,65,600/-, the break-up details of which are as follows:

$$\begin{aligned} & \text{Rs.13,000/-} + \text{Rs.5,200/-} \text{ (40\% of Rs.13,000/-)} \times 12 \times 18 \times \frac{1}{2} \\ & = \text{Rs.19,65,600/-} \end{aligned}$$

17. The compensation awarded by the Tribunal under all other heads are just and reasonable and hence, the same are not enhanced or reduced.



Thus, the compensation awarded by the Tribunal is enhanced from Rs.13,19,600/- to Rs.20,75,600/-. The break-up details of the enhanced compensation are as follows:

S.No.	Heads	Amount
1	Loss of Dependency	Rs.19,65,600/-
2	Loss of Estate	Rs. 15,000/-
3	Funeral Expenses	Rs. 15,000/-
4	Loss of Parental Consortium	Rs. 80,000/-
Total		Rs.20,75,600/-

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.13,19,600/- awarded by the Tribunal is enhanced to Rs.20,75,600/- (Rupees Twenty Lakhs Seventy Five Thousand and Six Hundred only). Out of the award amount as enhanced by this Court, the appellants/claimants are entitled to Rs.10,37,800/- each. The second respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.20,75,600/-, after deducting the amount(s), if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit (excluding the default period if any), to the credit of M.C.O.P.No.276 of 2018, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/claimants are permitted to withdraw the said amount, as per the



apportionment ordered by this Court. The appellants are directed to pay the necessary Court fee, if any, on the enhanced award amount. No costs.

25.07.2023

mrr

Index : Yes/No

Speaking Order (or) Non-Speaking Order

To

1.II Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Tiruvallur at Poonamallee.

2.The Section Officer,
Vernacular Records Section,
High Court, Madras.



WEB COPY



mrr

C.M.A.No.1537 of 2023

25.07.2023