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C.M.A.No.738 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.738 of 2023

1.V.Nandhini
2.Minor Ashok Kumar
[Minor 2nd appellant is represented by next friend
and mother, the 1st appellant V.Nandhini]
3.Panjalai ... Appellants

Vs

1.R.Sathasivam
2.The United India Insurance Company Limited,
Motor Third Party Hub, Silingi Building,
4th Floor, No.134, Greams Road,
Chennai – 600 006. ... Respondents
[R1 remained ex parte before the Tribunal]

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the award passed in judgment and decree dated 21.11.2022 in M.C.O.P.No.7267 of 2017 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellants : Mr.R.Nalliyappan
For Respondents : Mr.R.Rajesh, for R2
R1 – Ex parte



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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 21.11.2022 made in M.C.O.P No.7267 of 2017 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellants filed M.C.O.P. No.7267 of 2017 on the file of the the Motor Accident Claims Tribunal, III Small Causes Court, Chennai claiming a sum of Rs.46,00,000/- as compensation for the death of one Vijayan, who died in the accident that took place on 30.10.2017.

3. According to the appellants, on 30.10.2017 at about 18.30 hours, while the deceased Vijayan was walking along the Chittamur to Mathuranthagam Salai near Government Primary Health Centre, the rider of the motorcycle bearing Registration No.TN-16-A-6793, rode the same in a rash and negligent manner, dashed against the deceased, due to which, the deceased died on the spot. Hence, the appellants filed claim petition claiming compensation against the respondents.



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4. The first respondent remained ex parte before the Tribunal.

5. The second respondent filed counter statement denying all the averments made by the appellants in the claim petition. According to the respondent, the rider of the two wheeler rode the motorcycle under the influence of alcohol and thereby accident occurred, the 1st respondent violated the conditions of the policy and hence, the second respondent is not liable to pay compensation to the appellants; and that the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. The 1st appellant examined herself as PW1 and one Samikannu, eye-witness to the accident was examined as PW2. Nine documents were marked as Exs.P.1 to Exs.P.9. No witness was examined on the side of the respondent but copy of accident register was marked as Ex.R1.



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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 of the motorcyclist and directed the second respondent to pay a sum of Rs.20,31,600/- as compensation to the appellants at the first instance with a liberty to recover the same from the first respondent.

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

9. The learned counsel for the appellants submitted that the quantum of compensation awarded by the Tribunal is meagre. Though the appellants had established that the deceased was working as Mason and earning Rs.1,000/- per day, the Tribunal had taken the notional income as Rs.10,500/- per month, which is not just and reasonable. The learned counsel further submitted that this Court in similar circumstances had taken Rs.17,000/- as monthly income for the accident which took place in the year 2019 and hence, prayed for enhancement of compensation.



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10. The first respondent remained ex parte before the Tribunal and hence, the learned counsel for the appellants submitted that notice to the first respondent may be dispensed with and made an endorsement to that effect. Hence, notice to R1 is dispensed with.

11. The learned counsel for the second respondent per contra submitted that the Tribunal had correctly fixed the notional income as Rs.10,500/- in the absence of any evidence to show that the deceased was working as Mason and earning Rs.1,000/- per day; that the compensation awarded by the Tribunal is just and reasonable and hence, no interference is called for by this Court and prayed for dismissal of the appeal.

12. The only question in the instant appeal is-

Whether the compensation awarded by the Tribunal is just and reasonable?

13. It is seen from the record that the deceased was aged 32 years at the time of accident. As per the evidence of P.W.1, the deceased was



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working as Mason at the time of accident and is survived by his wife, minor son and his widowed mother. However, the appellants have not produced any documentary evidence to prove the income of the deceased. Considering the age of the deceased, his avocation, year of accident and the number of dependants, this Court is of the view that it would be just and reasonable to fix Rs.15,000/- per month as notional income for the deceased. He is entitled to 40% towards future prospects and the multiplier applicable is '16'. Since there are three dependants, $\frac{1}{3}$ rd has to be deducted towards his personal expenses. Thus, the compensation under the head loss of dependency is calculated as follows:- $15,000 + 6000(15,000 \times 40\%) \times 12 \times 16 \times \frac{2}{3} = \text{Rs.}26,88,000/-$.

14. 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.20,31,600/- to Rs.27,58,000/-, 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	18,81,600/-	26,88,000/-	Enhanced



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2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Loss of Estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	20,31,600/-	27,58,000/-	Enhanced by Rs.7,26,400/-

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.20,31,600/- is hereby enhanced to Rs.27,58,000/- 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 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 a receipt of copy of this Judgment at the first instance and recover the same from the first respondent. On such deposit, the appellants 1 and 3 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 share of the minor 2nd appellant is directed to be deposited in any one of the Nationalised Bank till the minor



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appellant attains majority. However, the 1st appellant, mother of the minor 2nd 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.

07.08.2023

Index: Yes/No
Neutral Citation: Yes/No
AT

To
1. The Motor Accident Claims Tribunal,
III Small Causes Court, Chennai.

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



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SUNDER MOHAN, J.

AT

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