



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1333 of 2023

1.M.Chandra

2.Vethanayagam

...Appellants

Vs.

1.The Correspondent,

Hajee Karutha Rawtherhowdia College,
Uthamapalayam Taluka, Theni District.
(R1 set *ex-parte* before the Tribunal)

2.The Manager,

Oriental Insurance Company LTd.,
No.131-A Gem Arcade, first Floor,
Bye Pass Road, Arasaradi,
Madurai - 625 010.
Represented by its local branch Office,
Oriental Insurance Company Ltd.,
No.59, Raja Street, Pudupalayam,
Gopichettipalayam Town & Taluk,
Erode District.

...Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.12.2018 in M.C.O.P.No.183 of 2018 on the file of the Motor Accident Claims Tribunal, III-Additional District and Sessions Judge, Erode, Gobichettipalayam.

For Appellants : Mr.S.Shanmuga Perumal

For Respondents : M/s.R.Sivakumar for R2

R1 - No appearance



J U D G M E N T

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The Civil Miscellaneous Appeal is filed challenging the quantum and for enhancement of compensation granted by the Tribunal in the award dated 12.12.2018 made in M.C.O.P.No.183 of 2018 on the file of Motor Accident Claims Tribunal, III- Additional District and Sessions Judge, Erode, Gobichettipalayam.

2. The appellants are claimants in M.C.O.P.No.183 of 2018 on the file of Motor Accident Claims Tribunal, III-Additional District and Sessions Judge, Erode, Gobichettipalayam. They filed the said Claim Petition claiming a sum of Rs.20,00,000/- as compensation for the death of Jenifer, who died in the accident that took place on 18.03.2016.

3. According to the appellants, on 18.03.2016 at about 03.20 p.m., when the deceased attempted to board into the college bus, the driver of the bus belonging to the first respondent bearing Registration No.TN-R-6586 started the vehicle in a rash and negligent manner. As a result of which the deceased fell down and the bus ran over her. In the said impact, the deceased suffered injuries and succumbed to death. The deceased was aged about 22 years, studying Ist year M.A. in the first respondent's college. Hence, the appellants



filed claim petition claiming a sum of Rs.20,00,000/- as compensation against the respondents.

4. The first respondent, who is the owner of the lorry, remained *ex-parte* before the Tribunal.

5. The second respondent/Insurance Company filed counter statement, denying all the averments made in the claim petition and stated that the accident had not happened due to the rash and negligent driving by the driver of the bus. At the time of accident the deceased accidentally fell down on her own and therefore, the second respondent is not liable to pay any compensation to the appellants.

6. Before the Tribunal, the appellants examined P.W.1 and P.W.2 and marked 12 documents as Exs.P1 to P12. The second respondent/ Insurance Company did not let in any oral and documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the deceased died due to the rash and negligent act of the driver of the first respondent's vehicle and directed the second respondent being the insurer of the vehicle to pay a sum of Rs.12,39,600/- as compensation to the appellants.



8. Aggrieved over the said award, the appellants have filed the present appeal seeking enhancement of compensation.

9. The learned counsel for the appellants submitted that the notional income of the deceased fixed by the Tribunal at Rs.8,000/- per month is meagre for the accident that took place in the year 2016. The deceased completed B.A. B.Ed., and was pursuing her M.A. in English Literature in the first respondent's college. This Court by order dated 20.01.2022 in C.M.A.No.2748 of 2021 in the case of *Karuppaye Vs Thendral and another*, had taken the notional income at Rs.15,000/- for a B.Sc, B.Ed. graduate for accident which took place in the year 2018 and hence, submitted that the monthly income fixed by the Tribunal at Rs.8,000/- was very meagre. The Tribunal has not awarded any amount towards “Loss of Love and Affection” and hence, prayed for enhancement of compensation.

10. Per contra, the learned counsel for the second respondent/ Insurance Company submitted that admittedly, the deceased was not employed at the time of the accident and she was only a college student. Hence, the notional income fixed by the Tribunal at Rs.8,000/- is just and reasonable. The



compensation awarded by the Tribunal under other heads are also just and reasonable and prayed for dismissal of the appeal.

11. Heard the learned counsel for the appellants as well as the learned counsel for the second respondent/ Insurance Company and perused the materials/ documents available on record before this Court. Though notice was served on the first respondent, none had entered appearance.

12. On perusal of the records, this Court finds that the appellants have established that the deceased was a B.A., B.Ed. graduate by marking Exs.P6 and P7 Degree Certificates. This Court in C.M.A.No.2748 of 2021 as stated supra, had fixed the notional income at Rs.15,000/- for a B.Sc, B.Ed. graduate for the accident which took place in the year 2018. Considering the fact that the accident is of the year 2016, the educational qualification and age of the deceased, this Court is of the view that it would be just and reasonable to fix the notional income as Rs.13,000/- per month. The deceased is entitled to 40% increase towards future prospects. The multiplier applicable is 18 as the deceased was aged about 22 years at the time of accident. 50% has to be deducted from the income towards personal expenses of the deceased as she was a spinster. Thus, the compensation under the head of “Loss of



Dependency” is calculated as follows:- Rs.13,000 + Rs.5200/- (13000 x 40%)
= Rs.18,200/- x 12 x 18 x ½ = Rs.19,65,600/-.

13. On perusal of the records, it reveals that the Tribunal has not awarded any compensation under the head "Filial consortium". Hence, this Court is of the view that the appellants are entitled for filial consortium of sum of Rs.40,000/- each. Thus, a sum of Rs.80,000/- is awarded under the said head. There is no dispute with regard to the compensation awarded under the other heads and hence, the same are confirmed.

14. It is seen that the appellants have filed the above appeal with a delay of 1433 days. This Court had condoned the delay on the condition that the appellants would forfeit the interest for the delay period of 1433 days. Hence, the appellants are not entitled for interest for the said period.

15. 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 or reduced
1.	Loss of dependency	12,09,600	19,65,600	enhanced
2.	Loss of filial consortium		80,000	granted
3.	Funeral expenses	15,000	15000	confirmed
4.	Loss of Estate	15,000	15,000	confirmed
	Total	12,39,600	20,75,600/-	Enhanced by Rs.8,36,000/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,39,600/- is hereby enhanced to Rs.20,75,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the award amount now determined by the Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective shares of the award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, after adjusting the



amount if any, already withdrawn. It is made clear that the appellants are not entitled for any interest for the delay period of 1433 days in filing the appeal on the amount of Rs.8,36,000.- enhanced by this Court, as per the order of this Court, as per the order of this Court dated 19.06.2023 in C.M.P.No.7620 of 2023 in C.M.A.SR.No.37220 of 2023. No costs.

11.07.2023

Index: Yes/No
Internet: Yes/No
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To

1.The Motor Accident Claims Tribunal,
III- Additional District and Sessions Judge,
Eorde, Gobichettipalayam.

2.The Section Officer
VR Section
High Court of Madras
Chennai – 600 104



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SUNDER MOHAN,J.

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