



C.M.A. No.264 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.264 of 2022

1.E.Ramakani

2.E.Pushpalatha

3.E.Sudalaimani

4.E.Ramasundaram

E.Lakshmanan (Expired as Bachelor)

... Appellants

Vs.

1.V. Annadurai

2.Sri Ram General Insurance Co.Ltd,
No.66, 2nd Floor, City Center Complex,
Thirumalaipillai Road, T.Nagar,
Chennai 600 017.

...Respondents



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P. No.8229/2013 dated 07.11.2019 on the file of the II Special Sub-Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr.Terry Chella Raja

For Respondents : R1 - Exparte

M/s. V. Pushpa and
T. Chandrakala for R2

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 07.11.2019 made in M.C.O.P.No.8229 of 2013 on the file of the learned II Special Sub-Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai.

2.The appellants filed M.C.O.P. No.8229 of 2013 on the file of the learned II Special Sub-Judge, Small Causes Court (Motor Accident Claims



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Tribunal), Chennai claiming a sum of Rs.15,00,000/- as compensation for the death of one S.Esakkimuthu, who died in an accident that took place on 01.01.2013.

3. According to the appellants on 01.01.2013 at about 11.30 hrs, while the deceased was riding the motor cycle bearing Registration No. TN 07 BS-8782 proceeding from South to North, at Rajiv Gandhi Salai, Perungudi, driver of the lorry bearing Registration No. TN-20-AR-1015 belonging to the first respondent drove the same in a rash and negligent manner hit against the motorcycle and caused the accident. In the accident, the said S.Esakkimuthu died, and hence the appellants filed claim petition claiming compensation against the respondents

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

5. The second respondent/Insurance Company filed counter statement denying the averments made in the claim petition. The second respondent also denied the age, occupation and monthly income of the deceased and stated that since the first respondent did not have a valid driving license the



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second respondent was not liable to pay compensation; and that in any event, the compensation claimed by the appellants was excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st appellant examined herself as P.W.1, Mr.Ranjith, eyewitness to the accident was examined as P.W.2 and Mr.Sankaran, co-worker of the deceased was examined as P.W.3. Ten documents were marked as Exs.P.1 to Exs.P.10 on the side of the appellants. The respondents neither examined any witness nor marked any document.

7. The Tribunal, considering the oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the first respondent and directed the second respondent/Insurance Company being insurer of the lorry to pay a sum of Rs.15,19,000/-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. Learned counsel for the appellants submitted that in the instant case, the appellants have established the avocation of the deceased and also the likely income of the deceased by marking documents and examining witnesses; that the Tribunal ignored the evidence on record and fixed the notional income of Rs.10,000/- per month based on the Judgment of this Court in *Andal and others vs. Avinan Kannan and another* reported in **2019 (1) TN MAC 54 (DB)**. The learned counsel further submitted that the deceased was doing the business of selling greens at a market; that the appellants have marked Ex.P.9 to show that the appellants were paying license fee for selling the greens in the market daily and Ex.P.10 to show that on a particular day, the deceased purchased greens to the extent of Rs.6000/-; that the appellants had examined P.W.1/ wife of the deceased, P.W.2/eye-witness to the accident and P.W.3/person who was employed as a worker with the deceased to show that the deceased was earning more than Rs.1200/- per day. The learned counsel further submitted that the Tribunal ought not to have fixed a meagre notional income at Rs.10,000/- and hence, prayed for enhancement of compensation.



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10. The first respondent remained exparte before the Tribunal and notice to the first respondent is dispensed with.

11. Learned counsel for the second respondent, per contra, submitted that the appellants have not produced any document to show the actual income earned by the deceased; that the version of P.W.1 and P.W.2 that the deceased earned more than Rs.1200/ per day is without any basis and cannot be accepted; that the Tribunal had rightly applied the formula given by this Court in *Andal and others vs. Avinan Kannan and another* (cited supra) and fixed the notional income of Rs.10,000/- per month; that the Tribunal had also erred in awarding compensation under the head Loss of Consortium thrice. The Tribunal ought to have awarded in total Rs.2,00,000/- under the said head. However, the Tribunal had awarded Rs.4,00,000/- under the said head, and hence, the compensation under the head Loss of Consortium has to be restricted to Rs.2,00,000/- since there are five dependents and prayed for dismissal of the appeal.

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



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13. This Court on perusal of the Judgment of the Tribunal and on hearing the learned counsels on either side finds that the only issue in this appeal is with regard to quantum of compensation awarded by the Tribunal. The Tribunal had fixed the notional income at Rs.10,000/- per month, after taking into consideration the Cost Inflation Index. It is seen from the records that the appellants have established the fact that the deceased was in the business of selling greens in the market. The appellants have also produced the license fee receipts to establish that the appellants were having a shop in the market. The appellants have also produced certain purchase bills to show that the deceased had purchased greens to the tune of Rs.6390/- on a particular day. Though the appellants claimed that the deceased was earning a sum of Rs. 1200 per day, there is no documentary evidence to establish the same. Hence, the said amount cannot be treated as the income of the deceased. However, from the evidence, on record namely the documents, Ex.P.9 and P.10, this Court is of the view that the deceased on an average could have earned Rs.500/- per day. Hence, it would be just and reasonable



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to fix the notional income of the deceased at Rs.13,000/- per month. Since the deceased was aged 53 years at the time of the death, the multiplier applicable is 11. The appellants are entitled to 10% enhancement towards future prospects. Since there are five dependents on the deceased, 1/4th of his income has to be deducted towards his personal expenses. Thus, the compensation towards loss of dependency is calculated as follows:-

$$\text{Rs.13,000} + 1300 (13000 \times 10\%) \times 12 \times 11 \times 3/4 = \text{Rs.14,15,700/-}$$

14.The appellants are not entitled to compensation under the head Loss of Love & Affection since a sum of Rs.40,000/- has been awarded by the Tribunal under the heads Loss of Consortium and Rs.1,60,000/- towards Loss of Parental Consortium. Hence, the amount of Rs.2,00,000/- awarded towards Loss of Love & Affection is set aside.

15. The compensation awarded by the Tribunal under other heads is just and reasonable and hence, the same is confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.15,19,000/- to



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Rs.16,45,700/-, break-up as follows :-

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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	10,89,000/-	14,15,700/-	Enhanced
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
5.	Loss of Love and Affection	2,00,000/-	---	Set aside
6.	Loss of Parental Consortium	1,60,000/-	1,60,000/-	Confirmed
	Grand Total	15,19,000/-	16,45,700/-	Enhanced by Rs.1,26,700/-

16. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,19,000/- is hereby enhanced to Rs.16,45,700/- 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 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. 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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dk/spp

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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Copy to:-

1. The II Special Sub-Judge,
Small Causes Court/Motor Accident Claims Tribunal,
Chennai.

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



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SUNDER MOHAN, J.

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