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C.M.A.No.1557 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1557 of 2023

1.Alamelu

2.Nanthakumar

3.Jayaprakash

4.Vanitha

... Appellants

Vs.

1.Jeeva

2.Iffco Tokio General Insurance Co. LTd.,

Office at D.No.9/4, 1st Floor, Srinivasam Arcade,
Advaitha Ashram Road, Salem District.

3.Mani

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.10.2022 in MCOP.No.181 of 2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.



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For Appellants : Mr.M.Lokesh

For Respondents : No appearance for R1
Mr.J.Michael Visuvasam for R2
Notice dispensed with for R3

JUDGMENT

The claimants have preferred this instant appeal seeking for enhancement of the compensation awarded by the Tribunal.

2. The appellants have filed the claim petition stating that on 02.12.2022 at about 4.30 p.m. while the deceased in his two wheeler was crossing the road near Solapallam bus stop towards Junction from north-south, the driver of the two wheeler bearing Registration No.TN-30-BR-1176 insured with the second respondent/Insurance Company herein came in a rash and negligent manner and hit the deceased, as a result of which the deceased sustained fatal injuries.

3. The first respondent, the rider of the offending vehicle, filed a



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counter stating that the accident took place only due to the negligence of the deceased and that the first respondent's vehicle is insured with the second respondent/Insurance Company and hence, he prayed that the second respondent is not liable to pay the compensation.

4. The second respondent/Insurance Company filed counter stating that the accident took place only due to the negligent act of the deceased; and that the first respondent did not possess a valid driving license; and that in any case the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

5. The appellants examined P.W.1 and P.W.2 and marked 22 documents as Exs.P.1 to P22 and Ex.X1. On the side of the second respondent/Insurance Company R.W.1 and R.W.2 were examined and marked Ex.X2 and X3.

6. The Tribunal, after considering the pleadings, oral and documentary



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evidence held that the accident occurred due to the rash and negligent act of the rider of the two wheeler and directed the second respondent/Insurance Company being the insurer of the offending vehicle to pay a sum of Rs.7,73,000/- as compensation to the appellants at the first instance and recover the same from the first respondent. Aggrieved over the said award, the appellants have preferred the instant appeal.

7. The learned counsel for the appellants submitted that the compensation awarded by the Tribunal is meagre and low in fixing the monthly notional income of Rs.8,000/- on the deceased. The learned counsel therefore, prayed for enhancement of compensation.

8. Though the first respondent was served and a learned counsel has entered appearance, there is no representation on behalf of the first respondent today before this Court.



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9. The learned counsel for the second respondent/Insurance Company submitted that the award of compensation is just and reasonable and therefore no interference is called for. The appellants had neither proved the avocation nor the income of the deceased and hence, submitted that the Tribunal had rightly fixed the notional income of the deceased and prayed for dismissal of the appeal.

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

9. On perusal of the records, it is seen that P.W.1, wife of the deceased was examined to show that the deceased was working as a cycle mechanic. The accident was of the year 2020. Considering the age, avocation, year of accident and the number of dependents, this court is of the view that it would be just and reasonable to fix the monthly notional income as Rs.15,000/- The deceased will be entitled to 10% enhancement towards future prospects as the deceased was aged about 56 years at the



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time of the accident. Thus the compensation under the head “Loss of Income” shall be fixed at Rs.15,000/- + 1,500/- (10% future prospects) = Rs.16,500/- x 12 x 9 x 2/3 (1/3 deducted towards personal expenses as daughter cannot be treated as a dependent) = Rs.11,88,000/-

10. The compensation awarded by the Tribunal under the head "Loss of love and affection" is meagre. The appellants 2 to 4 are each entitled to a sum of Rs.40,000/- and hence, the same is enhanced to Rs.1,20,000/-. The Tribunal has granted Rs.20,000/- under the head "Loss of consortium" and the same is enhanced to Rs.40,000/-. The Tribunal has awarded Rs.25,000/- under the head "Funeral expenses" and the same is reduced to Rs.15,000/-. On perusal of the award of the Tribunal, it is seen that the Tribunal has not awarded compensation under the head "Loss of Estate". Considering the facts and circumstances of this case, this Court is of the view that it would be just and reasonable to grant Rs.15,000/- under the head “Loss of Estate”. The compensation awarded by the Tribunal under the head “Loss of Income” is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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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 income	6,48,000	1188000	Enhanced
2	Loss of love and affection	80,000	1,20,000	Enhanced
2.	Loss of consortium	20,000	40,000	Enhanced
3.	Funeral expenses	25,000	15,000	Reduced
4.	Loss of estate	---	15,000	Granted
	Total	Rs.7,73,000/-	Rs.13,78,000/-	Enhanced by Rs.6,05,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,73,000 /- is hereby enhanced to Rs13,78,000 /- together with interest at the rate of 7.5% per annum (excluding the default period, if any) 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



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Company is directed to deposit the modified award amount now determined by this 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 at the first instance and recover the same from the first respondent. On such deposit, the appellants are permitted to withdraw their share of the award amount along with proportionate interest and costs, after adjusting the amount if any, already withdrawn as per the apportionment fixed by the Tribunal. No costs.

14.09.2023

Index: Yes/No

Internet: Yes/No

Speaking order: Yes/ No

gba

To

1.The Special District Court,
Motor Accident Claims Tribunal/
Salem.

2.The Section Officer

8/10



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VR Section
High Court of Madras, Chennai – 600 104.

SUNDER MOHAN,J.

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