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C.M.A. No.1420 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1420 of 2023
and CMP No.18444 of 2023

1.Selvam
2.Govindaraj
3.Priyanka

...

Appellants

Vs.

1.J.Karthikeyan
2.M/s.The New India Assurance Co.
Having Divisional Office at T.P.Hub,
Sedhu Krishna Trade Centre,
No.133/31-A, Trichy Main Centre,
No.133/31-A, Trichy Main Road,
Gugai, Salem.

...

Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act to enhance the compensation in the award dated 01.11.2021 made in MCOP No.158 of 2020 on the file of the Special District Court/MACT at Salem.



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For Appellants : Mr.S.Sathish

For Respondents : Mr.R.Sreevidhya for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant challenging the quantum of compensation awarded by the Tribunal.

2. The appellants filed claim petition in M.C.O.P. No.158 of 2020 on the file of the Special District Court, Motor Accident Claims Tribunal at Salem claiming a sum of Rs.70,00,000/- as compensation for the death of one Prakashraj who died in the accident that took place on 30.04.2019.

3. According to the appellants, on 30.04.2019 at about 16.30 hrs. while the deceased Prakashraj was riding his Hero Splendor Plus motor cycle bearing Regn.No.TN93 1170 on the left side of the Eadapadi – Jalakandapuram Main Road, Vellanaickenpalayam, near Amman Koil; that a lorry bearing Regn.No.TN52 A 3688 came from the opposite direction in a rash and negligent manner, hit against the said Prakashraj and caused the



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accident; that in the accident, the said Prakashraj sustained grievous injuries on his vital organs, died on the spot and hence, the appellants filed claim petition claiming compensation against the respondents.

4. The first respondent remained exparte before the Tribunal.

5. The second respondent filed counter statement denying the averments made in the claim petition. It is stated that the deceased alone drove the two wheeler in a rash & negligent manner and contributed to the accident; that the deceased did not possess valid driving licence at the time of accident; hence, the second respondent is not liable to pay compensation to the appellant and prayed for dismissal of the claim petition.

6. Before the Tribunal, the first appellant examined himself as PW1 and marked eighteen documents as Exs.P1 to P18. On the side of the second respondent, nine documents were marked as Exs.R1 to R9 but no witness was examined.

7. The Tribunal, considering the oral and documentary evidence, held



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that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the 1st respondent and directed the second respondent to pay a sum of Rs.13,81,000/- as compensation to the appellants, at the first instance and recover the same from the 1st respondent, for violation of policy conditions.

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

9. The learned counsel appearing for the appellants submitted that the appellants produced Ex.P5-salary slip to prove his income. The appellant has not examined the author of the said certificate and hence the Tribunal had not accepted the said salary slip. The appellants filed C.M.P.No.18444 of 2023 to receive the additional document mentioned which is the bank statement of the deceased. The learned counsel further submitted that the Bank statement would show that the deceased was earning an average of more than Rs.20,000/- per month. Hence, even if the author of the salary slip has not



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been examined, the Tribunal ought to have fixed a higher notional income.

The learned counsel further submitted that the compensation towards loss of love & affection has to be enhanced as the appellants are entitled to Rs.40,000/- each under the said head. The Tribunal had not awarded any compensation towards loss of estate and prayed for allowing the appeal by enhancing the compensation.

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

11. The learned counsel appearing for the respondent, per contra submitted that the Tribunal is right in fixing the notional income since the appellants have not examined the author of the salary slip; that the Bank statements produced by the appellants also do not confirm that the deceased was drawing a standard / regular income; that there is variation in the monthly income of the deceased that has been deposited into the credit of the Bank Account of the deceased ; that the salary slip also shows the total



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amount deposited into the bank account including commission charges which depends upon the collections made by him; therefore the Tribunal was right in fixing the notional income at Rs.12,000/- per month; that the award of compensation under other heads are just and reasonable and prayed for dismissal of the appeal.

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

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

14. On a perusal of the records, it is seen that the appellants have marked Ex.P5-salary slip of the deceased, however the author of the said document was not examined. The appellants have now filed a petition under Order 41 Rule 27 of CPC to receive the Bank statement which is certified by the Bank as additional document. The second respondent has no serious



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objection in accepting the said document. Being satisfied with the reasons given in the affidavit filed in support of the petition, C.M.P.No.18444 of 2023 is allowed and the said document is marked as Ex.P19.

15. From a reading of Ex.P5-salary slip and Ex.P19-Bank statement, it is seen that the bank account of the deceased was credited on an average of more than Rs.20,000/- every month. However, on a close scrutiny of Ex.P5, it reveals that it included a variable amount which depends on his collection every month. The basic pay is shown as Rs.3,000/-, HRA Rs.1500/- and Personal Allowance Rs.5500/-. Other amounts are variables. Considering the fact that the appellants had marked the salary slip of the deceased nearly for six months, prior to the accident and also the Bank statement, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.18000/- per month, since there is variable included in the salary slip. The deceased was aged 23 years at the time of accident and he died as bachelor. As per the judgments of the Hon'ble Apex Court in *Sarla Verma & others vs. Delhi Transport Corporation & another*, reported in 2009 (2) TNMAC 1



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SC Supreme Court and National Insurance Co. Ltd., Vs. Pranay Sethi and

others reported in ***2017 (2) TN MAC 609 (SC)***, the applicable multiplier is 18

and the appellants are entitled to 40% enhancement towards future prospects.

Thus, the compensation towards loss of income is calculated as follows -

$$18,000 + 7200 (18000 \times 40\%) \times 12 \times 18 \times 50\% = 27,21,600/-$$

Further, the amounts awarded by the Tribunal towards loss of love & affection at Rs.60,000/- is meagre. The appellants are entitled to a sum of Rs.40,000/- each. Hence, the amount of Rs.60,000/- awarded towards loss of love & affection is enhanced to Rs.1,20,000/-. The Tribunal has not awarded any amount towards loss of estate and transportation charges. Hence, a sum of Rs.15,000/- and Rs.10,000/- is awarded towards loss of estate and transportation charges respectively. The amount of Rs.25,000/- awarded towards funeral expenses is excessive and hence the same is reduced to Rs.15,000/-. Thus, the compensation awarded by the Tribunal is enhanced from Rs.13,81,000/- to Rs.28,81,600/- , 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 income	12,96,000/-	27,21,600/-	Enhanced
2.	Loss of love & affection	60,000/-	1,20,000/-	Enhanced
3.	Funeral expenses	25,000/-	15,000/-	Reduced
4.	Loss of estate	-	15,000/-	Granted
5.	Transportation charges	-	10,000/-	Granted
	Total	13,81,000/-	28,81,600/-	Enhanced by Rs.15,00,600/-

16. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,81,000/- is hereby enhanced to Rs.28,81,600/- 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 2nd 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



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the first instance and recover the same from the 1st respondent. 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. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

16.08.2023

Exhibits marked in Appellants' side:

Exhibit P19 : Bank statement of the deceased – Prakashraj for the period from 01.11.2018 to 31.03.2019

rgr

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN, J.

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To

1. The Special District Judge,
Motor Accident Claims Tribunal,
Salem.

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

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SUNDER MOHAN, J.

Today, the matter has been listed under the caption “*For Being Mentioned*”.

2. By oversight, the name of the learned counsel appearing for the appellants has been printed as Mr.S.Sathish instead of **Mr.M.Lokesh.**

3.Hence, the Registry is directed to print the name of **Mr.M.Lokesh** as learned counsel for the appellants and issue fresh order copy to the parties.

21.09.2023

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