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CMA No. 1451 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1451 of 2023

1. Malarkodi
2. Sangeetha,
3. Sathishkumar
4. Tamilarasi,
5. Vijayakumari
6. Krishnammal
7. Krishnamoorthy

...Appellants/claimants

Versus

1. R. Arikrishnan
2. The Branch Manager,
New India Assurance Co. Ltd,
No. 128-A, Thiru. Vi. Ka. Road,
Villupuram 605 602.

...Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Award of the Motor Accident Claim Tribunal (Special Court I) Jayankondam in M.C.O.P.No.23 of 2021 (Jayankondam Sub Court MCOP.No.53 of 2020) dated 12-12-2022.



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For Appellants : Mr. P. Parthikannan
For Respondents : R1 - Exparte
R2 – M/s.A.Saloni

J U D G M E N T

The claimants have preferred the above appeal seeking enhancement of the compensation awarded by the Tribunal.

2. The appellants filed the claim petition stating that on 20.04.2020 at about 7:00 a.m., while the deceased was riding a two-wheeler bearing Reg. No. TN-45 BK 1780, a heavy duty vehicle bearing Reg.No.TN-31 F-8538 belonging to the first respondent and insured with the second respondent, came in a rash and negligent manner, dashed against the deceased as a result of which the deceased sustained fatal injuries.

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

4. The second respondent filed a counter denying the averments made in the claim petition and stated that the accident did not take place due to the negligence of the driver of the offending vehicle; that in any case, the claim is excessive and prayed for dismissal of the claim petition.



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5. The appellants examined P.W.1 and P.W.2 and marked ten documents as Exs.P1 to P10. The second respondent examined R.W.1 and R.W.2 and marked nine documents as Exs.R1 to R9.

6. The Tribunal, after taking into consideration the oral and documentary evidence, fixed 20% contributory negligence on the deceased for not wearing a helmet. The Tribunal also held that the owner of the offending vehicle is liable to pay 20% of the compensation amount as the owner violated the policy conditions by not having a valid permit and allowing the person without a driving licence to drive the vehicle, and directed the second respondent/insurance company to pay 60% of the compensation amount determined by the Tribunal. The Tribunal dismissed the claim petition as against the seventh appellant herein.

7. The learned counsel for the appellants submitted that the compensation awarded by the Tribunal is meagre; that the notional income fixed by the Tribunal is meagre; that the Tribunal ought to have awarded Rs.40,000/- each towards Loss of Love and Affection for the appellants; that the Tribunal ought to have seen that the second respondent is liable to pay the compensation amount, even if the first



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respondent had violated the policy conditions; and that the Tribunal ought to have directed the second respondent to pay the compensation and thereafter recover it from the first respondent. The learned counsel therefore, prayed for enhancement of compensation.

8. Since the first respondent remained ex-parte before the Tribunal, the learned counsel for the appellants made an endorsement to dispense with notice to the first respondent. Hence, notice to the first respondent is dispensed with.

9. The learned Counsel for the second respondent, per contra, submitted that the award of the Tribunal is excessive and no interference is called for and that the Tribunal had erroneously deducted 1/5th towards personal expenses of the deceased and ought to have deducted 1/4th of the income towards personal expenses. The learned counsel therefore prayed for dismissal of the appeal.

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



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11. The questions involved in the instant appeal are as follows:

- WEB COPY (a) Whether the Tribunal was right in fixing 20% contributory negligence on the deceased?
- (b) Whether the award of compensation by the Tribunal is just and reasonable?

12. As regards the first question, it is seen that the deceased had suffered serious head injuries. The post-mortem certificate (Ex.P.2) shows that the deceased died due to the head injuries. Though P.W.2/ Eyewitness would state that the deceased was wearing a helmet, in view of the contradictions in his evidence, his version cannot be accepted. Further, it is seen from the evidence on record that the deceased also did not have a valid driving license at the time of the accident. Therefore, this Court is of the view that the Tribunal was right in fixing 20% contributory negligence on the deceased for the aforesaid violations.

13. As regards compensation, it is seen that the Tribunal had taken the notional income as Rs.14,000/- per month. Considering the facts, age, avocation of the deceased and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income at



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Rs.15,000/- per month. Since the deceased was aged 58 years at the time of the accident, he would be entitled to 10% enhancement towards future prospects. The multiplier applicable is '9'. In view of the number of dependents, 1/4th of his income has to be deducted towards his personal expenses. Therefore, the award of compensation under the head “Loss of Income” has to be:

Rs.15,000/- + 1500 (Rs.15000 X 10%) X 12 X 9 X 3/4 = Rs.13,36,500/-

14. The Tribunal has awarded a sum of Rs.25,000/- each to the appellants 1 to 6 towards Loss of Love and Affection. The first appellant being the wife of the deceased is entitled to a sum of Rs. 40,000/- towards Loss of Consortium. The appellants 2 to 5 who are the children of the deceased are entitled to Rs. 40,000/- each towards parental consortium. The sixth appellant being the mother of the deceased is entitled to Rs.40,000/- towards filial consortium. Therefore, the award under the head “Loss of Love and Affection” Rs.1,50,000” by the Tribunal is set aside. The Tribunal has not awarded any compensation towards Loss of Estate. Hence a sum of Rs.15,000/- is awarded under the



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said head. The compensation awarded by the Tribunal under the head

“Funeral Expenses” and “Damages to Clothes” are confirmed.

The award of the Tribunal under the head “Ambulance Expenses” is set aside.

15. It is also seen from the award that the Tribunal had fixed 20% contributory negligence on the owner of the offending vehicle since he did not have a valid permit and allowed the person to drive the vehicle who did not have a valid driving license. It is a case of breach of policy conditions. Even assuming that the owner is liable to pay 20% of the compensation amount, the Tribunal ought to have directed the second respondent to pay to the appellants at the first instance and recover 20% of the compensation from the first respondent. Therefore, the second respondent is directed to deposit 80% of the compensation amount now determined by this Court along with interest and costs at the first instance and recover 20% of the compensation from the first respondent. Thus, the compensation awarded by the Tribunal is enhanced from Rs.12,17,248/- to Rs.12,86,000/- break-up 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
1.	Loss of Income	13,30,560/-	13,36,500/-	Enhanced
2.	Loss of Love and Affection	1,50,000/- (25,000 X 6)	---	Set aside
3.	Damages to clothes	1000/-	1000/-	Confirmed
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
5.	Ambulance Expenses	25,000/-	---	Set aside
6.	Loss of Consortium to first appellant	---	40,000/-	Granted
7.	Parental Consortium to appellants 2 to 5	---	1,60,000/- (40,000/- X4)	Granted
8.	Filial Consortium to 6 th appellant	---	40,000/-	Granted
9.	Loss of Estate	---	15,000/-	Granted
	Total	Rs.15,21,560/-	16,07,500/-	
	20% contributory	Rs.3,04,312/-	Rs.3,21,500/-	



	negligence on the deceased			
	Net compensation payable to the appellants	Rs.12,17,248/-	Rs.12,86,000/-	Enhanced by Rs.68,752/-

16. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,17,248/- is hereby enhanced to Rs.12,86,000/- 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 enhanced 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 a copy of this Judgment at the first instance and recover 20% from the first respondent for violation of policy conditions. On such deposit, the appellants 1 to 6 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



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Fee, if any, on the enhanced award amount. No costs. This appeal is dismissed as against the seventh appellant.

13.09.2023

dk

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1.The Special Court - I
Motor Accident Claims Tribunal,
Jayankondam

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



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SUNDER MOHAN, J

dk

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