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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.08.2023

Coram

The Honourable Mr.Justice SUNDER MOHAN

C.M.A.No.1510 of 2023

1.Mr.Balaji

2.Minor B.Gowtham

rep. by his father Mr.Balaji

...Appellants

Versus

1.R.Senthamarai

2.The Reliance General Insurance Co. Ltd.,

No.6, Hadas Road, Nungambakkam,

Chennai – 600 034.

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying to enhance the award against the judgment and decree dated 28.02.2022 and made in M.A.C.T.O.P.No.22 of 2018 on the file of the Special District Court to deal with Motor Accident Claims Tribunal, No.1, Thiruvallur.

For Appellants : Ms.A.Subadra

For Respondent – 1 : Set Ex-Parte

For Respondent – 2 : Mrs.C.Bhuvanasundari



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JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellants/claimants seeking to enhance the compensation awarded by the Motor Accident Claims Tribunal No.1, Special District Court, Thiruvallur. in M.C.O.P.No.22 of 2018 vide judgment and decree dated 28.02.2022.

2. The brief facts of the case are as follows:

On 30.12.2017, at about 12.30 p.m., when one Mrs.P.Manju was travelling in a TATA SUMO car bearing Registration No.TN 21 AY 5573 belonging to the 1st respondent driven by its driver in Perambakkam to Poonamallee Road, Mannur Kattu Paguthi in a rash and negligent manner endangering the public safety, back right tyre of the car was burst, as a result of which, the car hit a TATA ACE van bearing Registration No.TN 37 CQ 0947 and thereby, the accident had occurred. In the accident, the said Manju had sustained grievous injuries and hence, she was admitted in MIOT Hospital for treatment. Despite treatment, she died in MIOT Hospital on 06.01.2018. Hence, the 1st appellant (husband of deceased Manju) and 2nd appellant (minor son of deceased Manju) had filed a claim



petition in M.C.O.P.No.22 of 2018 against the 1st respondent (owner of the offending vehicle) and 2nd respondent (insurer of the offending vehicle), claiming a sum of Rs.24,00,000/- as compensation.

3. The 2nd respondent/Insurance Company (insurer of the offending vehicle) had filed its counter statement denying all the averments made by the appellants/claimants in the Claim Petition. In the counter statement, it is stated that the accident occurred only due to the rash and negligent driving of the driver who drove the TATA ACE van and the deceased Manju had travelled as a passenger in the said van. Further, it is stated that as per the FIR, the accident had occurred due to a mechanical defect of TATA SUMO car. Therefore, the 2nd respondent/Insurance Company is not at all liable to pay any compensation to the appellants/claimants and the claim petition is liable to be dismissed.

4. Before the Tribunal, on the side of the appellants/claimants, the first appellant examined himself as P.W.1 and marked 16 documents as Exhibits P1 to P16. On the side of the respondents, no witnesses were examined and no documents were marked as exhibits.



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5. On appreciation of the oral and documentary evidence produced before it, the Tribunal arrived at the conclusion that the accident had occurred due to the rash and negligent driving of the driver who drove the car and hence, it held that 1st respondent (owner of the offending vehicle) and 2nd respondent (insurer of the offending vehicle) are jointly and severally liable to pay the compensation to the appellants/claimants and being the insurer of the offending vehicle, 2nd respondent is vicariously and statutorily liable to pay the compensation to the appellants/claimants. Hence, the Tribunal directed the 2nd respondent (insurer of the offending vehicle) to pay the compensation of Rs.18,92,872/- along with costs and interest at the rate of 7.5% per annum from the date of petition till the date of realization, to the appellants/claimants.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellants/claimants have preferred this appeal before this Court.

7. Ms.A.Subadra, learned counsel for the appellants/claimants submitted that while awarding compensation, the Tribunal failed to consider that the accident took place in the year 2017 and at the time of accident, the



deceased was 22 years old. She further submitted that although P.W.1 (1st appellant) deposed before the Tribunal that his deceased wife Manju was working as a Tailor and she was earning a sum of Rs.15,000/- as monthly income, however, the Tribunal had fixed a very meagre amount of Rs.8,000/- as notional monthly income of the deceased. Therefore, the learned counsel prayed this Court to enhance the notional monthly income of the deceased.

8. The 1st respondent remained *ex-parte* before the Tribunal and the learned counsel for appellants/claimants made an endorsement to that effect in the appeal papers.

9. *Per Contra*, Mrs.C.Bhuvanasundari, learned counsel appearing for the second respondent/Insurance Company submitted that the deceased Manju was a house wife and she was not doing any job and that the appellants/claimants did not produce any evidence to prove that the profession and monthly income of the deceased. Even in the absence of any income proof, the Tribunal fixed a sum of Rs.8,000/- as notional monthly income of the deceased, which is just and reasonable and hence, the same need not to be enhanced.



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10. Heard the learned counsel for the appellants/claimants and the learned counsel appearing for the second respondent/Insurance Company.

11. The only issue to be decided in this case is that whether the notional monthly income fixed by the Tribunal is just and reasonable?

12. As rightly pointed out by the learned counsel for the second respondent/Insurance Company, though P.W.1 (1st appellant) had deposed before the Tribunal that his deceased wife Manju was working as a Tailor and she was earning a sum of Rs.15,000/- as monthly income, he did not produce any documentary evidence to prove the profession and monthly income of her deceased wife. Since no income proof was produced on the side of the appellants/claimants, the Tribunal had fixed Rs.8,000/- as notional monthly income of the deceased. However, this Court feels that the notional monthly income fixed by the Tribunal is meagre.

13. Considering the year of accident, age and avocation of the deceased Manju at the time of accident, this Court is of the view that it would be just and reasonable to fix Rs.12,000/- as notional monthly income



of the deceased Manju. Thus, by adding 40% towards future prospects of the deceased, deducting 1/3rd towards personal expenses of the deceased and applying the multiplier '18', the compensation towards Loss of Earning of the deceased is calculated as follows:

$$\text{Rs.12,000} + \text{Rs.4,800 (40\% of Rs.12,000)} = \text{Rs.16,800/-}$$

$$\text{Rs.16,800} - \text{Rs.5,600 (1/3}^{\text{rd}} \text{ of Rs.16,800)} = \text{Rs.11,200/-}$$

$$\text{Rs.11,200} \times 12 \times 18 = \text{Rs.24,19,200/-}$$

14. It is to be noted that the 2nd appellant (minor son of the deceased) who lost his mother in the accident is entitled to get some compensation under the head, 'Loss of Love & Affection', but, the Tribunal did not award any compensation under the said head. Hence, this Court awards a sum of Rs.40,000/- as compensation under the head, 'Loss of Love & Affection'.

15. The compensation awarded by the Tribunal under all other heads are just and reasonable and hence, the same are confirmed. The break-up details of the enhanced compensation are as follows:

Sl.No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award Confirmed or Enhanced or Granted
1	Loss of Earning of the deceased	Rs.16,12,872/-	Rs.24,19,200/-	Enhanced



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Sl.No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award Confirmed or Enhanced or Granted
2	Medical Bill	Rs.2,00,000/-	Rs.2,00,000/-	Confirmed
3	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
4	Loss of Consortium	Rs.40,000/-	Rs.40,000/-	Confirmed
5	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
6	Transport to Hospital Expenses	Rs.10,000/-	Rs.10,000/-	Confirmed
7	Loss of Love & Affection	-----	Rs.40,000/-	Granted
Total		Rs.18,92,872/-	Rs.27,39,200/-	Enhanced by Rs.8,46,328/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.18,92,872/- awarded by the Tribunal is enhanced to Rs.27,39,200/- (Rupees Twenty Seven Lakhs Thirty Nine Thousand and Two Hundred only). Out of the award amount as enhanced by this Court, the 1st appellant (husband of the deceased) is entitled to 60% Rs.16,43,520/- and the 2nd appellant (minor son of the deceased) is entitled to 40% Rs.10,95,680/-. The second respondent/Insurance Company is directed to deposit the enhanced compensation of Rs.27,39,200/-, after deducting the amount(s), if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit (excluding the default period, if any), to the credit of M.C.O.P.No.22 of 2018, within a period of six weeks from the date of receipt of a copy of this judgment. On



such deposit being made, the 1st appellant is permitted to withdraw his share of the award amount along with proportionate interest and cost, as per the apportionment ordered by this Court. So far as the share of 2nd appellant (minor son of the deceased) is concerned, the second respondent/Insurance Company shall deposit the same in Fixed Deposit in any one of the Nationalized Banks, till he attains majority and the interest accrued thereon shall be withdrawn by his guardian once in three months, directly from the Bank. The appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced award amount, before receiving the copy of this judgment. No costs.

02.08.2023

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Index : Yes/No

Speaking Order (or) Non-Speaking Order
To

- 1.The Motor Accident Claims Tribunal No.1,
Special District Court, Thiruvallur
- 2.The Section Officer,
Vernacular Records Section,
High Court, Madras.



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SUNDER MOHAN, J.

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