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CMA No. 972 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 972 of 2022

1.Kavitha

2.Ponmozhi

3.Minor Manirathinam

(Rep. by next friend / mother 1st petitioner Kavitha)

... Appellants

Versus

1.Sivakumar

2.ICICI Lombard General Insurance Company Limited,
2nd and 3rd floor, Nungambakkam High Road,
Chottabhai Centre,
Chennai – 600 034.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No. 600 of 2020 dated 07.02.2022 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

For Appellants : Mr. R. Navaneetha Krishnan.

For Respondents : No appearance for R1.

Mr. M. Jeyaraj for R2.



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J U D G M E N T

The appeal has been filed by the claimants challenging the quantum of compensation awarded by the Special District Judge, Motor Accident Claims Tribunal, Salem in M.C.O.P. No. 600 of 2020 dated 07.02.2022.

2.The appellants had filed a claim petition before the Tribunal stating that on 12.12.2019 at about 07.15 p.m., while the deceased was riding a two wheeler bearing Registration No.TN-52-B-7854 in Magundanchavady to Edappady Main Road, a lorry bearing Registration No.TN-90-D-7213 driven by its driver in a rash and negligent manner in the opposite direction dashed the two wheeler as a result of which the deceased sustained fatal injuries and thus, the claimants were entitled for compensation.

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

4.The second respondent filed a counter denying all the averments made in the claim petition and stated that in any case, the claim was



excessive.

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5.The appellants examined two witnesses on their side and marked Ex.P.1 to Ex.P.11 and Ex.X.1. No witness was examined on the side of the respondents, however, marked Ex.R.1 and Ex.R.2.

6.The Tribunal after considering the oral and documentary evidence awarded a compensation of Rs.14,69,000/- to the appellants to be paid by the respondents. Aggrieved by the said quantum of compensation, the appellants have preferred the instant appeal.

7.The learned counsel for the appellants submitted that the accident is of the year 2019 and since the deceased was working as a power loom worker, the notional income fixed by the Tribunal at Rs.12,000/- is meagre and ought to have fixed a higher amount as notional income. The Tribunal had also only awarded Rs.60,000/- towards loss of consortium for the three claimants and they are each entitled to Rs.40,000/-. Further, the Tribunal has not awarded any amount under the head 'Loss of Estate'. and prayed for enhancement of compensation.



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9. The learned counsel for the second respondent per contra submitted that since the claimants have not established that the deceased was working as a power loom worker, notional income taken by the Tribunal is just and reasonable. As regards the compensation for loss of consortium, the Tribunal had awarded Rs.20,000/- for each petitioner and hence, Rs.60,000/- has been awarded. The learned counsel further submitted that Rs.25,000/- awarded towards Funeral Expenses is excessive and the claimants are not entitled for the same.

10. This Court on perusal of the award of the Tribunal and on hearing the counsels on either side finds that the claimants are aggrieved by the fact that the notional income fixed by the Tribunal was meagre. It is seen from the evidence of PW1 that the deceased was working in a power loom. However, no evidence has been produced by the claimants to establish the income. The deceased was aged 41 years survived by three dependents at the time of accident. The accident is of the year 2019



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and the wages of even a daily wage labourer was high then. Considering the above factors and the cost inflation index, this Court is of the view that it would be reasonable to fix the notional income as Rs.15,000/-. The deceased was aged 41 years at the time of the accident and hence 25% has to be added towards future prospects. The multiplier applicable is '14'. Since there are three dependents, one third of his income has to be deducted towards his personal expenses. Thus, the compensation under the head loss of income is modified as follows; Rs.18,750/- $(Rs.15,000 + 25\%) \times 14 \times 12 \times \frac{2}{3} = Rs.21,00,000/-$. The award under the head loss of love and affection of Rs.60,000/- is erroneous. However the claimants 2 and 3 are entitled to a sum of Rs.40,000/- each under the head 'loss of parental consortium'. Further, the compensation awarded under the head 'Funeral Expenses' is reduced from Rs.25,000/- to Rs.15,000/- and a sum of Rs.15,000/- is awarded towards loss of estate. The compensation awarded by the Tribunal under the head loss of consortium of Rs.40,000/- to the first petitioner is reasonable and the same 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
1.	Loss of income	13,44,000	21,00,000	Enhanced
2.	Loss of Love and Affection	60,000	---	deleted
3.	Loss of parental consortium	---	80,000	Granted
4.	Loss of Consortium	40,000	40,000	Confirmed
5.	Funeral Expenses	25,000	15,000	Reduced
6.	Loss of Estate	---	15,000	Granted
	Total	14,69,000	22,50,000	Enhanced by Rs.7,81,000/-

11. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,69,000/- is hereby enhanced to Rs.22,50,000/- 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 copy of this Judgment. On such deposit the appellants are



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permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn as per the apportionment fixed by the Tribunal. The share of the minor shall be deposited in the interest bearing Fixed Deposit in a Nationalized Bank till he attains the age of majority and the first appellant is permitted to withdraw the accrued interest once in every three months. The appellants are directed to pay the necessary Court Fee if any on the enhanced award amount. No costs.

18.07.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

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



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SUNDER MOHAN, J

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