



C.M.A. No.2187 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.2187 of 2023

1.R.Sumathi

2.Minor R.Vasanthakumar

3.Minor R.Santhrukumar

...Appellants/Petitioners

Vs.

1. V.Pandiyan

2. The Reliance General Insurance Company Limited.

Sirusti Mahal, 2nd Floor, New No.41, 8th Street,

Tatabad, Coimbatore 641 012.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 03.10.2019 in M.C.O.P.No.572/2015 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Sathyamangalam.



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For Appellants : Mr. R. Nalliyappan

For Respondents : R1 - Notice dispensed with
R2 - Mrs.C.Bhuvasundari

J U D G M E N T

The claimants have preferred the instant appeal seeking enhancement of compensation.

2. The claimants/appellants filed the claim petition stating that on 03.04.2015, at about 8 p.m., while the deceased was travelling in a lorry, he got out from the lorry and at that time, a Maruti Omni van insured with the second respondent herein came in a rash and negligent manner and 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/insurance company filed a counter stating that the accident took place only due to the negligence of the deceased;



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that the lorry in which the deceased travelled was parked in an haphazard manner; that in any case the compensation claimed by the appellants was excessive and prayed for dismissal of the claim petition.

5. The appellants examined P.W.1 and P.W.2 and marked twelve documents as Exs.P1 to P12. The second respondent neither examined any witness nor marked any document.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place due to the negligence of the driver of the Maruti Omni Van insured with the second respondent herein and directed the second respondent to pay a compensation of Rs.15,82,000/-

7. The learned counsel for the appellants submitted that though the appellants have established the fact that the deceased was working as a driver of a heavy vehicle, the Tribunal fixed a low notional income of Rs.9,000/-;



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that no compensation was awarded under the head loss of love and affection to appellants 2 and 3 and prayed for enhancement of the 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/insurance company per contra, submitted that the award of the compensation is just and reasonable; that the appellants have not established the fact that the deceased was working as a driver and hence, the Tribunal was right in fixing the notional income at Rs.9,000/- and 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 only question involved in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable.

12. On perusal of the records, it is seen that the appellants had examined P.W.1/wife of the deceased to show that the deceased was working as a heavy vehicle driver. The appellants have also marked Ex.P11/license of the deceased. Considering the age, avocation, year of the accident, number of dependants and the fact that the appellants themselves claimed that the deceased earned Rs.12,000/-, this Court is of the view that it would be just and reasonable to fix notional income of the deceased at Rs.12,000/-. The deceased was aged 40 years as per the finding of the Tribunal. There is no challenge to the said finding. Hence, the appellants would be entitled to 40% enhancement towards future prospects. The multiplier applicable is '15'. Considering the number of dependants, 1/3 of his income has to be deducted towards personal expenses. Thus, the award under the head "Loss of Income" would be:-

**Rs.12,000/- X Rs.4800/- (40% of Rs.12,000/-) 12 X 15 X 2/3 -
Rs.20,16,000/-**



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13. The Tribunal had not awarded any compensation under the head “Loss of Love and Affection” to the appellants two and three. Hence the appellants two and three are each entitled to Rs.40,000/- under the head “Loss of Love and Affection”. The Tribunal has not awarded any compensation under the head “Loss of Estate”. Hence, the appellants are entitled to a sum of Rs.15,000/- under the head “Loss of Estate”. The compensation awarded by the Tribunal under other heads is just and reasonable, and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.15,82,000/- to Rs.21,41,000/-. The break-up is as follows:-

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	15,12,000/-	20,16,000/-	Enhanced
2.	Funeral Expenses	15,000/-	15,000/-	Confirmed
3.	Transportation Expenses	15,000/-	15,000/-	Confirmed



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4.	Loss of Love and affection	40,000/-	80,000/-	Enhanced
5.	Loss of Estate	---	15,000/-	Granted
	Total	15,82,000/-	21,41,000/-	Enhanced by Rs.5,59,000/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,82,000/- is hereby enhanced to Rs.21,41,000/- 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 award amount, now determined by this Court, 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. The accident is of the year 2015 and the minor claimants/appellants 2 and 3 were aged 15 and 13 years respectively and by this time they would have attained majority. Therefore on such deposit, all the appellants/claimants are permitted to withdraw their share of award amount, as per the apportionment fixed by the Tribunal along



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with proportionate interests and costs. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

Copy to:-

- 1.The Subordinate Judge,
Motor Accident Claims Tribunal
Sathyamangalam.
2. The Section Officer,
VR Section,
High Court,
Madras.



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SUNDER MOHAN, J

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