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C.M.A.No.1522 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1522 of 2023

1.S.Prasanthkumar
2.Minor. Jassika .P.M
[Rep., by next friend/guardian father S. Parasanthkumar]
3.Sureshkumar
4.Kalpana
5.Annadurai
6.Suganthi

... Appellants

Vs

1.S. Murugan
2.M/s. National Insurance Co. Ltd.,
LRN Colony, Sarada College main road,
Hasthampatty, Salem – 7.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.04.2022 made in M.C.O.P.No.642 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants	: Mr. M. Lokesh
For Respondents	: Mrs. R. Sree Vidhya, for R2 R1 – Ex parte



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 01.04.2022 made in M.C.O.P.No. 642 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

2. The appellants filed M.C.O.P. No.642 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem, claiming a sum of Rs.1,50,00,000/- as compensation for the death of one Monisha, who died in the accident that took place on 05.01.2019.

3. According to the appellants, on 05.01.2019 at about 18.15 hours, while the deceased Monisha along with her daughter Jassika was riding a two wheeler bearing Registration No. TN-77-Y-9432 on the Singipuram to Vazhapady main road, near Singipuram Power House, the lorry bearing Registration No. TN-AS-7584, which was coming in opposite direction, driven by its driver in a rash and negligent manner, hit against the motorcycle and caused the accident; that in the above said accident; the said



Monisha sustained grievous injuries and died on the spot. Hence, the appellants filed claim petition claiming compensation against the respondents.

4. The first respondent remained ex parte before the Tribunal.

4(b) The second respondent filed counter statement denying all the averments made by the appellants in the claim petition. According to the second respondent, the rider of the motorcyclist did not possess any driving license and did not possess any valid insurance policy at the time of accident; and in any case the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

5. The 1st appellant examined himself as PW1 and examined two other witnesses as PW2 and PW3 and marked Ex.P.1 to Ex.P.25 besides Ex.X1 to Ex.X5. The second respondent did not examine any witness or mark any document on their side.

6. The Tribunal after considering the evidence and documents filed on the side of the appellants, held that the accident occurred due to the rash and negligent driving by the driver of the first respondent; and directed



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the respondents to jointly and severally pay a sum of Rs.34,25,000/- as compensation to the appellants.

7. Aggrieved by the said order, the appellants have preferred the present appeal seeking enhancement of compensation.

8. The learned counsel for the appellant submitted that though the appellants have produced the salary certificate of the deceased to prove the income of the deceased, the Tribunal had taken only Rs.20,000/- as monthly income including future prospects. The deceased was working as a Teacher and was earning gross salary of Rs.21,500/- as per the evidence of PW.2 and which is also confirmed by Ex.X1 to Ex.X5 issued by the school authorities. The learned counsel submitted that in any case, the Tribunal ought to have granted 40% enhancement towards future prospects. The Tribunal ought to have awarded compensation at the rate of Rs.40,000/- each under the head loss of love and affection to the minor daughter and the parents of the deceased. The Tribunal had not awarded compensation under the head loss of estate and transportation and hence, prayed for enhancement of compensation.



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9. The first respondent remained ex parte before the Tribunal and hence, the learned counsel for the appellants submitted that notice to first respondent may be dispensed with and hence, dispensed with.

10. The learned counsel for the second respondent per contra submitted that the Tribunal was right in fixing the monthly income at Rs.20,000/-. The learned counsel further submitted that the Tribunal had deducted 1/4th towards personal expenses. The first appellant-husband and the minor daughter are the only dependants of the deceased and hence, 1/3rd has to be deducted towards personal expenses and hence, the learned counsel prayed for dismissal of the appeal.

11. The only question in the instant appeal is-

Whether the compensation awarded by the Tribunal is just and reasonable?

12. From the materials on record, this Court finds that the appellants have marked Ex.X1 to Ex.X3, the salary certificate for the period between October 2018 to December 2018 showing the net monthly salary at



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Rs.20,450/-. The appellants have also filed the bank passbook showing that the deceased was drawing Rs.20,427 in July 2018 and Rs.19,224/- in August 2018. In the light of the above evidence, this Court is of the view that the Tribunal ought to have fixed Rs.20,000/- as monthly income and added 40% enhancement towards future prospects since she was aged 22 years at the time of accident. The multiplier applicable is '18'. Though there are six claimants, this Court is of the view that the parents of the deceased and the in-laws of the deceased cannot be treated as dependants of the deceased. The father of the deceased was age 50 years at the time of accident and he cannot be treated as dependant of the deceased. Thus, the Tribunal ought to have deducted 1/3rd towards personal expenses of the deceased. Thus, the compensation under the head loss of income is calculated as follows:- $Rs.20,000 + 8000(20,000 \times 40\%) \times 12 \times 18 \times 2/3 = Rs.40,32,000/-$. The loss of love and affection awarded by the Tribunal Rs.1,20,000/- is confirmed and appellants 2, 5 and 6 are each entitled to Rs.40,000/-. The award of the Tribunal granting Rs.20,000/- each to the claimants is not correct. No amount was awarded towards loss of estate by the Tribunal. Therefore, a sum of Rs.15,000/- is awarded towards loss of estate. No amount was awarded towards Transportation by the Tribunal.



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Therefore, a sum of Rs.10,000/- is awarded towards Transportation. The Tribunal has awarded a sum of Rs.25,000/- towards Funeral expenses which is excessive and hence, the same is reduced to Rs.15,000/-.

13. 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.34,25,000/- to Rs.42,32,000 /-, break-up 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 income	32,40,000/-	40,32,000/-	Enhanced
2.	Loss of love and affection	1,20,000/-	1,20,000/- (40,000x3)- for the appellants 2, 5 & 6	Confirmed
3.	Loss of consortium	40,000/-	40,000/-	Confirmed
4.	Funeral expenses	25,000/-	15,000/-	Reduced
5.	Loss of estate	-	15,000/-	Granted
6.	Transportation	-	10,000/-	Granted
	Total	34,25,000/-	42,32,000/-	Enhanced by Rs.8,07,000/-



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14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.34,25,000/- is hereby enhanced to Rs.42,32,000/- together with interest at 7.5% per annum from the date of petition till the date of deposit. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.8,07,000/- enhanced by this Court as per the order of this Court dated 26.06.2023, made in C.M.P.No.8145 of 2023 in C.M.A.SR.No.42474 of 2023. The second 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. On such deposit, the appellants 1, 3 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 share of the minor 2nd appellant is directed to be deposited in any one of the Nationalised Bank till the minor appellant attains majority. However, the 1st appellant, father of the minor 2nd appellant is permitted to withdraw the accrued interest once in three months. The



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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
Neutral Citation: Yes/No
AT

To

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

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



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SUNDER MOHAN, J.

AT

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