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CMA No. 1910 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1910 of 2023

1.Chandrasekaran @ Chandrasekar

2.C. Masilamani

3.V. Kala

4.C. Arun

... Appellants

Versus

1.G. Karthick

2.M/s. Reliance General Insurance Co.Ltd.,
No. 6, Hadows Road, Reliance House,
6th floor, Nungambakkam,
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. 5976 of 2015 dated 14.09.2018 on the file of the Chief Judge, Motor Accident Claims Tribunal / Small Causes Court, Chennai.

For Appellants : Mr. T.G. Ravichandran.

For Respondents : Mr. P. Suresh Srinivasan for R2.

R1 – ex parte.



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J U D G M E N T

The appeal has been filed challenging the award passed by the Tribunal in M.C.O.P. No. 5976 of 2015 dated 14.09.2018.

2.The appellants had filed claim petition seeking compensation before the Tribunal stating that on 03.04.2015, while the deceased was travelling as a pillion rider in a motor cycle bearing Registration No. TN 05 AK 8544 ridden by the first appellant from South to North on the left side of the Saidapet Maraimalai Adikalar Bridge, a lorry bearing Registration No.TN 46 H 0187 driven by its driver in a rash and negligent manner hit against the motor cycle, as a result of which the deceased sustained severe injuries and died on the spot and the first appellant sustained grievous injuries and was admitted in the hospital.

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

4.The second respondent filed counter denying all the averments made in the claim petition stating that the vehicle was not insured with the second respondent at the time of the accident; and hence the second



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respondent is not liable to pay compensation; that the accident occurred due to the negligent driving of the first appellant; that the petition is bad for non-joinder of necessary parties; and that in any case, the compensation claimed by the appellants is excessive and prayed for dismissal of the petition.

5. The appellants examined one witness on their side as PW.1 and marked Ex.P.1 to Ex.P.21. On the side of the second respondent, RW1 was examined and Ex.R.1 to Ex.R.4 were marked.

6. The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the first respondent and awarded a compensation of Rs. 4,00,000/- to the appellants to be paid by the respondents 1 and 2. Aggrieved by the said award, the appellants had preferred the instant appeal.

7. The learned counsel for the appellants submitted that the award of compensation passed by the Tribunal is meagre and requires enhancement. The Tribunal had fixed very low monthly income at



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Rs.6,500/- and adopted wrong multiplier '7' by presuming the age of the deceased as 62 years at the time of the accident. The postmortem certificate reveals that the age of the deceased was 58 years at the time of the accident. The Tribunal had ignored the said finding and hence, prayed for allowing the appeal.

8.The first respondent remained ex parte before the Tribunal, and the learned counsel for the appellants sought permission of this Court to dispense with the notice to the first respondent. He has made an endorsement to that effect. Hence, notice to the first respondent is dispensed with.

9.The learned counsel for the second respondent, per contra, submitted that the award of compensation is just and reasonable and no interference is called for. The age of the deceased was mentioned as 62 years in Ex.P.3, the accident register and subsequently, correction was made showing the age as 58 years. Therefore, the Tribunal was right in fixing the age of the deceased between 61 - 65 and rejected the age mentioned in the postmortem certificate. Further, the learned counsel submitted that the award under all the heads are reasonable and no



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interference is called for.

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10.The only question that arise for consideration in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable.

11.On a perusal of the records, it is seen that the deceased was a home maker. It is true that the contribution of the home maker cannot be measured in monetary terms. However, this Court is of the view that notional income fixed by the Tribunal is very low. Considering the age of the deceased and the year of the accident (i.e.) 2015, it would be just and reasonable to fix the notional income at Rs.12,000/- per month. It is seen that in the postmortem certificate, the age of the deceased was shown as 58 years. From Ex.P.3, Accident register, it is seen that the deceased was admitted by a driver of the ambulance. The evidence suggests that the deceased was incapable of disclosing her age at the time of admission. In such circumstances, the age mentioned in the accident register even if it has been subsequently corrected cannot be the basis to determine the age. Ex.P.4, postmortem certificate reveals the age as 58



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years. Therefore, this Court is of the view that the age of the deceased has to be taken as 58 years for computing the loss of income and hence, the correct multiplier is 9 and the appellants are entitled to 10% enhancement towards future prospects. Since there are four dependents, 1/3rd has to be deducted towards personal expenses. Therefore, the loss of income would be Rs.12,000/- + Rs.1200 (10% of Rs.12,000) = Rs.13,200 X 12 X 9 X 2/3 = Rs.9,50,400/-. Further, no amount has been granted under the head loss of love and affection. Hence, the appellants are granted Rs.40,000/- each under the head loss of love and affection which comes to the tune of Rs.1,60,000/-. The award under the other heads is just and the same are confirmed. Thus, the award of the Tribunal is modified as follows;

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependancy	3,64,000	9,50,400	Enhanced
2.	Funeral Expenses	15,000	15,000	Confirmed
3.	Transport charges	6,000	6,000	Confirmed
4.	Loss of estate	15,000	15,000	Confirmed
5.	Loss of love and affection	---	1,60,000	Granted
	Total	4,00,000	11,46,400	Enhanced by Rs.7,46,400/-



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12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,00,000/- is hereby enhanced to Rs.11,46,400/- 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 respondents are 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 are permitted to withdraw their respective shares along with proportionate interest and costs, less the amount if any, already withdrawn. 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

To

1. The Chief Motor Accident Claims Tribunal,



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Chief Small Causes Court,
Chennai.

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2.The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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