



C.M.A. No.1144 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

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Munivenkatamma (died)

1.Varadaraj

2.Ramakka

3.Marakka

4.Munirathna

.. Appellants

Vs.

1. Vimal Book Centre

No.21, Mahammad Ali Club Road

Near Bus Stand, Dharmapuri.

2. ICICI Lombard General Insurance

Company Limited, Dharmapuri.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.12.2021 made in MCOP No.1 of 2019 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Hosur.



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For Appellants : Mr.N.Manoharan

For R1 : No appearance

For R2 : Mr.M.Jayaraj

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 17.12.2021 made in MCOP No.1 of 2019 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Hosur.

2. The appellants filed MCOP No.1 of 2019 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Hosur, claiming a sum of Rs.25,00,000/- as compensation for the death of one Munivenkatamma, who died in the accident that took place on 15.01.2012.

3. According to the appellants, on the date of accident, while the deceased Munivenkatamma and her son Varadaraj were walking on the left



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side of the road on Hosur – Krishnagiri Road, near Pathakotta bus stop, the driver of the Bolero car bearing Registration No.TN-29-AB-6098 belonging to the 1st respondent, which was coming in the opposite direction from Krishnagiri to Hosur Road, drove the same in a rash and negligent manner, hit against the said Munivenkatamma and caused the accident. In the above said accident, the said Munivenkatamma sustained injuries and died thereafter.

4. The 1st respondent, owner of the car filed counter statement denying all the averments made in the claim petition and stated that the accident had occurred only due to the negligence of the deceased, who suddenly crossed the road. He also denied the age, avocation and income of the deceased, that the total compensation claimed by the appellants is excessive and hence, prayed for dismissal of the claim petition.

5. The 2nd respondent/Insurance Company filed a counter statement denying all the averments made by the appellants in the claim petition. According to the 2nd respondent, the accident occurred on 15.01.2012 and



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Munivenkatamma died on 18.06.2013 i.e., after 1 ½ years from the date of accident. The appellants have not produced any document to show that the deceased died due to the injuries sustained in the accident. She took treatment in the hospital only for two weeks. The 2nd respondent also denied the age, avocation and income of the deceased and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st appellant, son of the deceased was examined as PW1 and 20 documents were marked as Exs.P1 to P20. The respondents did not let in any oral and documentary evidence.

7. The Tribunal after considering the evidence and documents filed on the side of the appellants, awarded a compensation of Rs.20,300/- to the appellants. Aggrieved by the said order, the appellants have preferred the present appeal seeking enhancement of compensation.



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8. The learned counsel appearing for the appellants submitted that the injured was aged 75 years at the time of accident. In spite of continuous treatment, she passed away on 18.06.2013 after 1 ½ years from the date of accident. Though the appellants had established before the Tribunal the nexus between the accident and death of Munivenkatamma, the Tribunal had erroneously held that there was no nexus and awarded compensation only for the injuries. The learned counsel further submitted that the Tribunal erred in applying strict rules of evidence in denying the claim of the appellants and that the Tribunal ought to have seen that it is a beneficial legislation. The learned counsel relied upon the following judgments in support of his contentions:

(i) ***2020 (13) SCC 486 [Sunita & others v. Rajasthan State Road Transport Corporation and others];***

(ii) ***2011 SCC Online Gauhati 180 [Union of India and another vs. Bholi Rai];***

(iii) ***2023 (2) KLT 368 [New India Assurance Company, represented by its Assistant Manager vs. Gopinathan K.K. and others];***



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The learned counsel also submitted that in any event, the Tribunal awarded a very meagre sum of Rs.20,300/- towards medical expenses and did not award any compensation under the other conventional heads and therefore, prayed for enhancement of compensation.

9. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company submitted that the Tribunal was right in holding that there was no nexus between the accident and death. There was no evidence let in by the appellants to establish that the deceased was under a continuous treatment for the injuries sustained by her after the accident. The deceased had only suffered fracture on her right hand upper arm and was treated in the hospital only for two days. Considering the facts and circumstances of the case, the award of the Tribunal cannot be faulted and therefore, prayed for dismissal of the appeal.

10. Though notice has been served on the 1st respondent and their name is printed in the cause list, none appears before this Court.



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11. Heard the learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

12. The issues involved in the above appeal are:

(i) Whether the Tribunal was right in holding that there was no nexus between the accident and death of Munivenkatamma?

(ii) Whether the compensation awarded by the Tribunal was just and reasonable?

13. It is seen from the records that the accident took place on 15.01.2012. The evidence discloses that the deceased suffered injuries on the forehead, right eye lid and fracture on right hand upper arm. She had taken treatment for two days in the hospital. But there is no evidence to suggest that she was bed ridden and had taken treatment continuously. The deceased died 1 ½ years thereafter on 18.06.2013. The evidence of P.W.1 examined on the side of the appellants does not suggest that there was nexus between the accident and death of Munivenkatamma. This Court is of the view that there



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cannot be any dispute about the proposition that the strict rules are not applicable before the Tribunal. However, in the absence of any evidence, one cannot infer nexus between the accident and death. In the present case, the Tribunal was right in holding that there was no nexus between the accident and death.

14. However, the Tribunal had awarded compensation of Rs.20,300/- towards medical expenses incurred by the deceased for the injuries sustained by her. The appellants had established that the injured was a vegetable vendor. The records reveal that the deceased took treatment as an in-patient in Srinivasa Nursing Home, Hosur, from 15.01.2012 to 17.01.2012. Considering the nature of injuries and the period of treatment taken by the deceased, this Court is of the view that the deceased would have suffered loss of income atleast for a period of one month. Since the accident took place in the year 2012, the notional income can be fixed at Rs.10,000/-. Therefore, the appellants are entitled to compensation under the head 'loss of income' at Rs.10,000/-. The Tribunal had not considered the compensation under the



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other conventional heads viz., transportation, extra nourishment and attendant charges. Considering the age of the deceased and the period of treatment taken by her, the appellants are entitled to Rs.10,000/- towards transportation, Rs.15,000/- towards extra nourishment and Rs.20,000/- towards attendant charges. The compensation awarded by the Tribunal towards medical expenses is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Medical expenses	20,300/-	20,300/-	Confirmed
2.	Loss of income	-	10,000/-	Granted
3.	Transportation	-	10,000/-	Granted
4.	Extra nourishment	-	15,000/-	Granted
5.	Attendant charges	-	20,000/-	Granted
	Total	20,300	75,300	Enhanced by Rs.55,000/-

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.20,300/-



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is hereby enhanced to Rs.75,300/- 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 2nd 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 four (4) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellants are permitted to withdraw the award amount equally along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

28.07.2023

Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

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SUNDER MOHAN, J

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To

1. The Motor Accident Claims Tribunal
The Additional Subordinate Judge, Hosur.

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

C.M.A. No. 1144 of 2022

Dated: 28.07.2023

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