



WEB COPY



C.M.A.No.1700 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1700 of 2023

1.Murugan

2.Kala

... Appellants

Versus

1.SAS Trading,
65-Razack Garden Main Road,
MMDA Colony,
Arumbakkam, Chennai – 600 106.

2.Mohammed Rafiq

3.The Bajaj Allianz General Insurance Company Limited,
No.497/498, 5th Floor,
Isanakattima Building,
Poonamallee High Road,
Arumbakkam, Chennai-600 106

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, seeking to set aside the judgment and decree dated 10.11.2022 passed in M.C.O.P. No.01 of 2018 and enhance compensation on the file of the Motor Accident Claims Tribunal, Sub Court, Mettur.

For Appellants
For R3

: Mr.V.Anandhamoorthy
: Ms.R.Sreevidhya



C.M.A.No.1700 of 2023

JUDGMENT

WEB COPY This appeal has been filed by the claimants seeking enhancement of compensation awarded by the Tribunal in M.C.O.P.No.01 of 2018, dated 10.11.2022.

2.The claim petition was filed stating that on 05.07.2017, at about 7.50 a.m., while the 1st appellant and his daughter were walking at Avinashi Road near CRD College, the car bearing Registration No.TN 02 AX 1675, driven by its driver in a rash and negligent manner and dashed against the 1st appellant's daughter; due to which, she sustained head injury and multiple injuries all over the body and succumbed to the injuries; that thus the appellants are entitled for compensation.

3.The respondents 1 and 2/owner and driver of the offending vehicle were remained *ex-parte* before the Tribunal.

4.The 3rd respondent/Insurance Company resisted the claim petition and stated that the driver of the car did not possess valid driving license at the time of accident and he was under the influence of alcohol; that hence, the 3rd respondent is not liable to pay any compensation to the



C.M.A.No.1700 of 2023

appellants; that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellants examined three witnesses and marked Ex.P.1 to Ex.P.13 on their side. The respondents had not examined any witness or marked any document.

6.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by the 2nd respondent and directed the 3rd respondent to pay a sum of Rs.9,76,000/- as compensation to the appellants.

7.Aggrieved over the award passed by the Tribunal, the appellants filed the present appeal seeking for enhancement of compensation.

8.The learned counsel for the appellants submitted that the quantum of compensation awarded by the Tribunal is meagre and hence prayed for enhancement on the ground that the calculation made by the Tribunal is not in accordance with law and prayed for allowing the appeal.



C.M.A.No.1700 of 2023

WEB COPY 9.The learned counsel for the appellants submitted that the respondents 1 and 2 remained *ex-parte* before the Tribunal and therefore, he requested this Court to dispense with notice to the respondents 1 and 2 and he had also made an endorsement to that effect. Hence, notice to the respondents 1 and 2 is dispensed with.

10.The learned counsel for the 3rd respondent per contra submitted that the award of the compensation is in fact excessive and there is no reason to interfere with the said award and prayed for dismissal of the appeal.

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 deceased was minor aged about 16 years. It is the case of the appellant that the deceased was a bright student studying in 11th std. Considering the said fact, this Court is of the view that the annual income of the deceased can be fixed as Rs.60,000/-. The multiplier applicable is 15. Hence, the compensation



C.M.A.No.1700 of 2023

under the head loss of income has to be Rs.9,00,000/-. The amount awarded by the Tribunal towards funeral expenses is on the higher side and the same is reduced to Rs.15,000/-. The transportation charges at Rs.20,000/- awarded by the Tribunal is confirmed. Likewise a sum of Rs.80,000/- awarded towards loss of consortium is also confirmed. The amount awarded by the Tribunal towards mental agony is set aside as it is unwarranted in the circumstances. Thus, the compensation awarded by 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 Income	7,56,000	9,00,000	Enhanced
2.	Transportation	20,000	20,000	Confirmed
3.	Funeral Expenses	20,000	15,000	Reduced
4.	Mental Agony	1,00,000	-	Set Aside
5.	Loss of consortium	80,000	80,000	Confirmed
	Total	9,76,000	10,15,000	Enhanced by Rs.39,000/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,76,000/- is hereby enhanced to Rs.10,15,000/- together with interest



C.M.A.No.1700 of 2023

at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 3rd 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 are entitled to withdraw their respective shares as per the apportionment fixed by the Tribunal, 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.

08.09.2023

rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The Subordinate Judge,
The Motor Vehicle Accident Tribunal,
Mettur.

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



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C.M.A.No.1700 of 2023

SUNDER MOHAN, J.



WEB COPY



C.M.A.No.1700 of 2023

rst

C.M.A.No.1700 of 2023

08.09.2023