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CMA No. 940 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 940 of 2023

1.Thaiyalnayagi

2.Ravi

3.Murugesan

4.Manjula

5.Panjavarnam

... Appellants

Versus

1.M. Babbi

2.The Oriental Insurance co.Ltd.,
No.115/116, Prakasam Salai,
Chennai – 600 118.

... 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. 6745 of 2018 dated 20.01.2023 on the file of the Motor Accidents Claims Tribunal III Judge, Small Causes Court, Chennai.

For Appellants : Mr. S. Prabhu.

For Respondents : Mr. T.K. Premkumar for R2.

No appearance for R1.



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J U D G M E N T

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The claimants have preferred the instant appeal seeking enhancement of compensation in the award passed by the Tribunal in M.C.O.P. No.6745 of 2018 dated 20.01.2023.

2.The appellants filed the claim petition stating that on 29.07.2018, at about 08.30 hrs, while the deceased was walking on a public road, an Eicher vehicle belonging to the first respondent and insured with the second respondent came in a rash and negligent manner and dashed the deceased as a result of which the deceased sustained fatal injuries.

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

4.Before the Tribunal, the second respondent filed counter stating that the accident took place only due to the negligence of the deceased; and that in any case, the compensation claimed was excessive and prayed for dismissal of the appeal.

5.The appellants examined PW1 and PW2 and marked Ex.P.1 to



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Ex.P.21. 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 rash and negligent driving of the driver of the vehicle insured with the second respondent and directed the second respondent to pay a compensation of Rs.7,34,000/- to the appellants.

7.The learned counsel for the appellants submitted that though the deceased was working as a Security person and was earning a sum of Rs.15,000/- per month, the Tribunal fixed meagre notional income of Rs.8,000/- and prayed for enhancement.

8.Though notice has been served on the first respondent, none has entered appearance on his behalf.

9.The learned counsel for the second respondent, per contra, submitted that the compensation awarded by the Tribunal is just and



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reasonable; and that the Tribunal, in fact, had awarded excessive compensation by deducting 1/4th towards personal expenses, when the appellants 2 to 5 are married children of the deceased and they were not dependents of the deceased.

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

11. On perusal of the records, it is seen that the deceased was aged 65 years at the time of the accident. Though PW1 had deposed that the deceased was working as a Security person in a company by name M/s. Banu Moulding Company and was earning Rs.15,000/- per month, no document was produced to substantiate his income. However, considering the fact that the deceased was employed, his age and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.12,000/-. Since the deceased was aged 65 years at the time of the accident, the multiplier applicable is 7. The appellants 2 to 5 are married children of the deceased and hence, they cannot be said to be fully dependent on the deceased. Therefore, the



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Tribunal ought to have deducted 1/3rd towards personal expenses.

Therefore, the Loss of Dependency has to be Rs.12,000 X 12 X 7 X 2/3 =

Rs.6,72,000/-. The award under the other heads are 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 Dependency	5,04,000	6,72,000	Enhanced
2.	Loss of Consortium	2,00,000	2,00,000	Confirmed
3.	Loss of Estate	15,000	15,000	Confirmed
4.	Funeral Expenses	15,000	15,000	Confirmed
	Total	7,34,000	9,02,000	Enhanced by Rs.1,68,000/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,34,000/- is hereby enhanced to Rs.9,02,000/- 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 is directed to deposit the award amount now determined by this Court along with proportionate 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 first appellant is entitled to



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withdraw Rs.7,00,000/- and the second to fifth appellants are entitled to withdraw Rs.50,500/- each 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.

26.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accidents Claims Tribunal
III Judge, Small Causes Court,
Chennai.

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



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SUNDER MOHAN, J

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