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C.M.A.No.1726 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1726 of 2022

1.Desan Lakshmi

2.S.Manikandan

... Appellants

Vs

1.Venkateshan Rajesh

2.The Manager,

The National Insurance Company Limited,
Motor Third Party Cell, 3rd Floor,
No.46, Moore Street, Chennai – 600 106.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.01.2021 in MCOP.No.37 of 2018 on the file of the Motor Accident Claims Tribunal, I, Special District Court, Tiruvallur.

For Appellants : Mr. K. Naveen Kumar

For Respondents : Mr. J. Chandran, for R2
R1 – Ex parte



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J U D G M E N T

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This Civil Miscellaneous Appeal has been filed by the claimants challenging the quantum of compensation granted by the Tribunal in the award dated 27.01.2021 made in M.C.O.P. No.37 of 2018 on the file of the Motor Accident Claims Tribunal, No.I, Special District Court, Tiruvallur.

2. Before filing C.M.A.No.1726 of 2022 and after the judgment in MCOP., Desan Subramanyan, husband of the first appellant died. The second appellant, who is the son of Desan Subramanyan was impleaded as legal heir in the appeal, as per order passed in C.M.P.No.8357 of 2022 dated 08.07.2022. The 1st appellant and her husband filed M.C.O.P. No.37 of 2018 on the file of the Motor Accident Claims Tribunal, No.I, Special District Court, Tiruvallur claiming a sum of Rs.25,00,000/- as compensation for the death of their son by name S.Manoharan @ Mahendran, who died in the accident that took place on 11.04.2017.

3. According to the appellants, on 11.04.2017 at about 23.00 hours, while the deceased Manoharan was travelling in a car bearing Registration No.AP-26-BD-3335, along with Murugesan and Ezhumalai



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belonging to the first respondent driven by one Suriya @ Abinesh in a rash and negligent manner who applied sudden break, due to which, the car fell in the pit and dashed against the tree nearby the road. As a result, the deceased sustained grievous injuries. Immediately he was taken to Ponneri Government Hospital, and thereafter, he was taken to Government Stanley Medical College and Hospital, Chennai, where he died on 17.04.2017.

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

5. The second respondent filed a counter statement denying all the averments made by the appellants in the claim petition. According to the second respondent, the driver of the first respondent did not have a valid driving license and thus, violated the policy condition; that hence, the second respondent is not liable to pay the compensation; and that in any event the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. The 1st appellant / mother of the deceased examined herself as P.W.1 and one Ethiraj, eye-witness to the accident was examined as P.W.2



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and marked Ex.P.1 to Ex.P.6. The second respondent did not examine any witness but marked Ex.R1 to R6.

7. The Tribunal after considering the evidence and documents filed on either side, held that the accident occurred due to rash and negligent driving by the driver of the first respondent and directed the first respondent to pay a sum of Rs.15,16,616/- as compensation to the appellants. The Tribunal dismissed the claim petition as against the second respondent / Insurance company.

8. Aggrieved by the said award, the appellants have preferred the present appeal seeking enhancement of compensation.

9. The learned counsel for the appellants submitted that the Tribunal had fixed the liability on the owner of the insured vehicle since the driver did not have a valid driving license. In view of the violation of policy conditions, the Tribunal ought to have directed the second respondent / Insurance Company to pay the compensation amount at the first instance and thereafter, recover it from the owner. The learned counsel



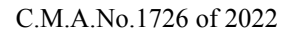
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further submitted that the Tribunal had not considered the future prospects of the deceased while computing loss of income and therefore, prayed for enhancement of the compensation amount.

10. The learned counsel for the second respondent per contra submitted that the finding of the Tribunal fixing the liability on the owner of the vehicle cannot be faulted and the quantum of compensation awarded by the Tribunal also cannot be faulted in the absence of any evidence to prove the avocation and income of the deceased. The learned counsel therefore, prayed for dismissal of the appeal.

11. The questions that arise in the instant appeal are-

- i) Whether the Tribunal was right in directing the first respondent / owner of the vehicle to pay the compensation instead of directing the second respondent to pay and recover compensation from the first respondent?
- ii) Whether the compensation awarded by the Tribunal is just and reasonable?



13. As regards compensation, it is seen that the Tribunal had fixed the notional income of Rs.13,302/- per month which is reasonable. However, the Tribunal had not taken into consideration the future prospects which the appellants are entitled to at 40%. Hence, the compensation under the head loss of income is computed in the following manner:-

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.15,16,616/- to Rs.20,91,284/-.



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break-up is 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 earning	14,36,616/-	20,11,284/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Loss of consortium	40,000/-	40,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Transport expenses	10,000/-	10,000/-	Confirmed
	Total	15,16,616/-	20,91,284/-	Enhanced by Rs.5,74,668/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,16,616/- is hereby enhanced to Rs.20,91,284/- 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 / 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 eight (8) weeks from the date of a receipt of copy of this Judgment at the first instance and recover the same from the first respondent. On such deposit, the first appellant / mother of deceased is entitled to 95% share in



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the total compensation and the second appellant / brother of the deceased is entitled to remaining 5%. 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
Neutral Citation: Yes/No
AT

To
1.The Motor Accident Claims Tribunal,
I, Special District Court, Tiruvallur.

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



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SUNDER MOHAN, J.

AT

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