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CMA No. 1135 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1135 of 2022

1.S. Santhi

2.K. Subramani

3.S. Thamizhmaran

... Appellants

Versus

1.K. Sudhakar

2.ICICI Lombard General Insurance Co.Ltd.,

No. 45 & 46, "Arihant Plaza",

Wall Tax Road, Chennai – 600 003.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to enhance the compensation awarded in the Judgment and Decree dated 08.07.2021 passed in M.C.O.P. No. 4101 of 2016 on the file of the Motor Accident Claims Tribunal, In the II Court of Small Causes at Chennai.

For Appellants : Mr. Amar Dineshbhai Pandiya.

For Respondents : Mr. M. Jayaraj for R2.

R1 - Exparte.



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J U D G M E N T

The appeal has been filed by the appellants challenging the award passed by the Tribunal in M.C.O.P. No. 4101 of 2016 dated 08.07.2021.

2.The appellants had filed a claim petition before the Tribunal stating that on 09.05.2016, while the deceased was riding the motor cycle bearing Registration No. TN 07 BA 2692 on Korattur Agraharam Road near Annai Nagar Sri Venkateswara Sweet and Bakery, a water tanker lorry bearing Registration No. TN 01 W 6458 belonging to the first respondent driven by its driver in a rash and negligent manner hit the motor cycle, as a result of which the deceased sustained severe injuries and died on the spot. Thus, the appellants filed claim petition claiming compensation.

3.The second respondent filed counter denying all the averments made in the claim petition. The accident register reveals that there was no lorry involved in the accident. In any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.



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4.The first respondent remained *exparte* before the Tribunal.

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5.The appellants examined two witnesses as PW1 and PW2 on their side and marked Ex.P.1 to Ex.P.18. On the side of the second respondent, RW1 was examined and four documents were marked as Ex.R.1 to Ex.R4.

6.The Tribunal after considering the oral and documentary evidence, fixed the entire negligence on the driver of the lorry and held that the first appellant, being the mother of the deceased alone is entitled for the compensation and directed the second respondent to pay a sum of Rs.18,58,700/- to the first appellant. Aggrieved by the said award, the appellants have preferred the instant appeal.

7.The learned counsel for the appellants submitted that the compensation awarded by the Tribunal is meagre. Though the appellant produced Ex.P.7, the degree certificate for having completed B.C.A.(Bachelor of Computer Application) Course, the Tribunal fixed the notional income at Rs.12,525/- per month. The learned counsel further submitted that the appellants also produced Ex.P.8 Bank pass



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book to show that money was transferred to his account though they had not let in any evidence to prove the exact monthly income. Further, the Tribunal had awarded only Rs.40,000/- towards Loss of Love and Affection to the first appellant and submitted that all the three appellants are each entitled to Rs.40,000/- under the said head.

8.The first respondent remained ex-parte before the Tribunal. The learned counsel for the appellants submitted that notice to the first respondent may be dispensed with and made an endorsement to that effect in the court bundle. Hence, notice to the first respondent is dispensed with.

9.The learned counsel for the second respondent submitted that though the appellants claimed that the deceased was an M.B.A., graduate, no documentary proof was submitted to prove the same. Ex.P.7 shows that the deceased had completed B.C.A., degree. However, no evidence has been adduced to prove the income earned by the deceased. In such circumstances, the Tribunal by taking into consideration the cost inflation index has rightly fixed the notional income at Rs.12,525/- per month and prayed for dismissal of the appeal.



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10.The only question involved in the instant appeal is whether the Tribunal had awarded just and reasonable compensation.

11.The appellants had not produced any evidence to show the exact income earned by the deceased. However, they had produced Ex.P.7, degree certificate to prove that the deceased had completed a B.C.A. Degree and Ex.P.8, bank pass book to show that some amount has been credited to his account. Considering the age, educational qualification namely the fact that the deceased completed B.C.A., degree and the year of the accident, this Court is of the view that it would be reasonable to fix the notional income at Rs.16,000/- per month. The deceased is entitled to 40% future prospects since the deceased was aged 25 years. The multiplier applicable is 17. Further, 50% has to be deducted towards personal expenses as the deceased died as a bachelor. Hence, the loss of income would be Rs.16,000 + Rs.6,400 (40% of Rs.16,000/-) = Rs.22,400 X 12 X 17 X 50% = Rs.22,84,800/-. The award under the head loss of love and affection of Rs.40,000/- is



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enhanced to Rs.1,20,000/-. The award under the other heads are just and reasonable 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 income	17,88,672	22,84,800	Enhanced
2.	Loss of love and affection	40,000	1,20,000	Enhanced
3.	Loss of estate	15,000	15,000	Confirmed
4.	Funeral Expenses	15,000	15,000	Confirmed
	Total	18,58,672 rounded off to 18,58,700	24,34,800	Enhanced by Rs.5,76,100/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.18,58,700/- is hereby enhanced to Rs.24,34,800/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

13. It is submitted by the learned counsel for the second respondent that they have already deposited the compensation awarded by the Tribunal and the same was withdrawn by the appellants. Hence,



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the second respondent is directed to deposit the enhanced amount of Rs.5,76,100/- now determined by this Court along with interest and costs 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 permitted to withdraw Rs.3,50,000/-, the second appellant is permitted to withdraw Rs.1,50,000/- and the third appellant is permitted to withdraw Rs.76,100/- along with proportionate interest and costs. The appellants are directed to pay necessary Court fee, if any on the enhanced compensation. No costs.

14.08.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accident Claims Tribunal,
II Court of Small Causes at Chennai.
2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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