IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1435 of 2023

1.M.Amudha
2.N.Munusamy .. Appellants

Vs.

1.Sri Kamakshi Logistics Private Ltd.,
No.121/59, Linghi Chetty Street,
Chennai - 600 001.
(R-1 set exparte in Trial Court)

2. The Oriental Insurance Insrance Co. Ltd.,
Motor Third Party Cell,
No.115, Prakasam Salai,
Broadway, Chennai - 600 001. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.02.2020 passed in MCOP No.5478 of 2017 by the Motor Accident Claims Tribunal, Chennai (in the Special Judge - I of Small Causes Court, Chennai - 104.)

For Appellants : Mr.Terry Chella Raja

For Respondents : Ms.Elveera Ravindran
for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants chalenging the quantum of compensation granted by the Tribunal in the award dated 10.02.2020 passed in MCOP No.5478 of 2017 by the Motor Accident Claims Tribunal, Chennai (in the Special Judge - I of Small Causes Court, Chennai - 104.)

2.The appellants filed M.C.O.P. No.5478 of 2017 on the file of the Motor Accident Claims Tribunal (Special Judge - I, Court of Small Causes, Chennai) claiming a sum of Rs.1,25,00,000/- as compensation for the death of one Dhanalakshmi, who died in the accident that took place on 17.08.2017.

3. According to the appellants, on the date of accident, when the deceased Dhanalakshmi was travelling as a pillion rider in the motorcycle bearing Regn. No.TN20 CK 5467 from Vengal to Periyapalaiyam, near G.T. Vidhya Mandir School, a trailer lory bearing Regn. No.TN 04 P 8763 belonging to the 1st respondent which was coming from Periyapalaiyam towars Vengal, driven by its driver in a rash and negligent manner, hit against the motorcycle and caused the accident. In the above said accident, the said Dhanalakshmi sustained fatal injuries and died on the spot.

4. The 1st respondent remained exparte before the Tribunal.

5. The 2nd respondent filed counter statement denyig all the averments made by the appellants in the claim petition. According to the 2nd respondent, the accident occurred only due to the negligent act of the rider of the motorcycle. The respondent also denied the age, avocation and income of the deceased. The total compensation claimed by the appellants are excessive

and prayed for dismissal of the claim petition.

5. The 2nd appellant examined himself as PW2, the rider of the motorcycle was examined as PW1, one R.Jaisingh, eye-witness to the accident was examined as PW3, the employer of the deceased was examined as PW4. Twenty documents were marked as Exs.P.5 to Exs.P.24. Neither documents were marked nor witnesses were examined on the side of the 2nd respondent.

6. The Tribunal after considering the evidence and documents filed on the side of the appellants, awarded a compensation of Rs.16,91,000/- to the appellants. Aggrieved by the said order, the appellants have preferred the present appeal seeking enhancement of compensation.

7. The learned counsel appearing for the appellants submitted that though the appellants produced salary certificate Ex.P22 to show that the deceased was doing part time job in the evenings and earning a sum of Rs.7,000/- per month besides the salary she was earning from the regular

employment, the Tribunal had erroneously rejected Ex.P22 since the author of same was not examined before the Tribunal. The learned counsel relied upon the judgment of Hon'ble Apex Court in **Rajwati @ Rajjo & Others v. United India Insurance Company Ltd. & Others reported in 2022 Live Law (SC) 1016,** in support of his submission contending that the Tribunal ought not to have rejected Ex.P22-salary certificate merely because the author of the salary certificate was not examined. The learned counsel further submitted that the Tribunal had also erred in not taking Ex.P23 - Payslip for the month of July 2017, wherein the salary of the deceased was shown as Rs.12,500/- per month. The Tribunal had erroneously taken the monthly income as Rs.11,246/- which is the net monthly income of the deceased shown in the said salary certificate. The learned counsel also contended that the appellants namely the parents of the deceased are entitled to Rs.40,000/- each towards loss of love and affection however the Tribunal had awarded only a sum of Rs.50,000/- totally. For the above reasons, the learned counsel prayed for enhancement of compensation.

8. The learned counsel for the respondent, per contra submitted that the

Tribunal had rightly taken Ex.P23-Payslip, to fix the monthly income of the deceased at Rs.11,246/-. Since the appellants have not examined the author of Ex.P22 - salary certificate, the Tribunal was right in rejecting the same. The learned counsel further submited that the judgment of the Hon'ble Apex Court relied on by the learned counsel for the appellants may not be applicable to the facts of the instant case. In that case, the appellants produced salary certificate of the deceased for his regular employment. In the instant case., it is the case where the appellants sought for arriving at the monthly income of the deceased by including the income earned in the part time job. In such case, the burden is more on the appellants to establish the said source of income. The learned counsel therefore submitted that the said judgment may not be applicable to the facts of the instant case. The learned counsel further submitted that the compensation awarded under other heads are also just and reasonable and hence no interference is called for in the award passed by the Tribunal.

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

10. The only issue involved in this appeal is whether the compensation awarded by the Tribunal is just and reasonable.

11. This court finds that the appellants have marked Exs.P19, P22 & P23 - salary certificates and pay slip to show that the deceased was earning Rs.12,500/- per month out of her regular employent and Rs.7,000/- per month by doing part time job. The Tribunal had rejected Ex.P22 - salary certificate stating that the author of Ex.P22 was not examined. The Tribunal had accepted Ex.P23 - pay slip, however had taken only the net income shown in the said payslip, as the monthly income of the deceased. This Court finds that that the Tribunal ought to have taken the gross monthly income of the deceased as Rs.12,500/- which is shown in Ex.P23-payslip . Further, it is the case of the appellants that the deceased was doing part time job and earning Rs.7,000/- per month apart from her regular employment. However, the

appellants have not examined the author of Ex.P22-salary certificate issued by the Company which is said to have employed the deceased on a part time basis. There cannot be any dispute with the principle of law laid down in the the judgment of the Hon'ble Apex Court cited supra, relied on by the learned counsel for the appellant wherein it has been held that strict rules of evidence are not applicable in Motor Accident cases. However, in the instant case, it is seen that the salary certificate sought to be relied upon by the appellants is not that of a regular employment. In the case cited by the learned counsel for the appellants, the Hon'ble Apex Court had held that the salary certificate produced by the appellants ought to have been accepted even in the absence of examination of person who had authored the said salary certificate. That was on the premise that an able bodied person would be employed and hence the salary certificate cannot be rejected. However, in the instant case, it is not the case that salary certificate produced for regular employment was rejected by the Tribunal. The appellants have stated that the deceased was also doing part time job. In such circumstances, this court is of the view that when the appellants claim additional income besides the regular income, burden is more on the appellants and they ought to have examined the author of the said salary certificate. This circumstance cannot be equated with the salary certificate issued for regular employment. Hence, this Court is of the view that the Tribunal was right in rejecting Ex.P22 salary certificate which states that the deceased was doing part time job. Since the deceased was a bachelor, 50% has to be deducted towards personal expenses of the deceased. The multiplier applicable is 17. Thus, the compensation awarded by the Tribunal under the head loss of dependancy is calcuated as follows -

Rs.12,500 + 5,000 (12500 x 40%) x 12 x 17 x 50% = Rs.17,85,000/-

12. That apart, the compensation awarded by the Tribunal at Rs.50,000/- under the head loss of love and affection is meagre. The appellants being the parents of the deceased are entitled to a sum of Rs.40,000/- each towards loss of love and affection. Therefore, the compensation awarded by the Tribunal at Rs.50,000/- towards loss of love and affection is hereby enhanced to Rs.80,000/-. The compensation awarded by the Tribunal under other heads are just and reasonable and hence the same

are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.16,91,000/- to Rs.19,00,000/-, break-up 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 dependancy	16,05,990/-	17,85,000/-	Enhanced
2.	Loss of love & affection	50,000/-	80,000/-	Enhanced
3.	Loss of Estate	15,000/-	15,000/-	Confirmed
4.	Transport charges	5,000/-	5,000/-	Confirmed
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	**16,90,990/- rounded off to Rs.16,91,000/-**	**19,00,000/-**	**Enhanced by Rs.2,09,000/-**

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,91,000/- is hereby enhanced to Rs.19,00,000/- together with interest at 7.5% per annum from the date of petition till the date of deposit. It is made clear that the appellants are not entitled for any interest for the delay period

on the amount of Rs.2,09,000/-, enhanced by this Court as per the order of this Court dated 26.06.2023 made in C.M.P. No.8960 of 2023 in C.M.A. SR. No.49188 of 2023. 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. On such deposit, the appellants are permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn, on the basis of apportionment fixed by the Tribunal. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

24.07.2023

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

SUNDER MOHAN, J

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To

The Motor Accident Claims Tribunal
Special Subordinate Judge No.1,
Small Causes Court,
Chennai.

C.M.A. No. 1435 of 2023

Dated: 24.07.2023