



C.M.A.No.960 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.960 of 2023

1.Shanthi.C

2.Arunkumar.C

3.Vedhammal

... Appellants

Vs.

1.S.Murali

2.Reliance General Insurance Co. Ltd.,
Reliance House; 6th Floor,
No.06, Haddows Road,
Nungambakkam, Chennai – 06.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.03.2022 made in M.A.C.T.OP.No.2844 of 2020 on the file of the Motor Accident Claims Tribunal Special Sub Judge No.2, Small Causes Court, Chennai.

For Appellants

: Mr.S.Prabhu

For Respondents

: R1 –Notice served & No appearance

Mr.G.Vasudevan for R2



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The claimants have preferred this appeal seeking enhancement of compensation.

2.The appellants/claimants have filed a claim petition stating that on 28.11.2019 at about 15.55 hours, while the deceased was riding his motorcycle, the lorry belonging to the first respondent insured with the second respondent came in a rash and negligent manner and hit the vehicle of the deceased, as a result of which, the deceased sustained fatal injuries.

3.The first respondent remained exparte before the Tribunal.

4.The second respondent filed a counter stating that the accident took place only due to negligence of the deceased; that the driver of the vehicle insured with the second respondent did not have a valid fitness certificate; and that in any case, the compensation claim made by the appellants/claimants is excessive and hence, the claim petition is liable to be dismissed.



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5.Before the Tribunal, the first appellant examined herself as P.W.1 and marked 17 documents as Exhibits P1 to P17. On the side of the second respondent, one Mr.Saravanabhavan was examined as R.W.1 and 1 document was marked as Exhibit R1.

6.The Tribunal after taking into consideration the oral and documentary evidence held that the accident took place due to the negligence of the vehicle insured with the second respondent herein, directed the second respondent to pay a sum of Rs.12,63,200/- as compensation to the appellants at the first instance and recover the same from the first respondent as he did not have a Fitness Certificate.

7.The learned counsel for the appellants submitted that the award of the Tribunal is meagre; that the Tribunal has fixed a very low monthly income of Rs.11,500/- for the deceased though the appellants had established that the deceased was working as a Security Guard in a private concern. He therefore prayed for enhancement of compensation.

8.Though notice was served on the first respondent and his name has been printed in the cause list, there was no representation for him.



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9.The learned counsel for the second respondent per contra submitted that the appellants have not established the avocation or income of the deceased. Hence, the Tribunal was right in fixing the notional income at Rs.11,500/- which is reasonable and no interference is called for and prayed for dismissal of the appeal.

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

11.The only question involved in this appeal is whether the quantum of compensation awarded by the Tribunal is just and reasonable.

12.On perusal of records, it is seen that the deceased was aged 52 years at the time of the accident. P.W.1. had deposed before the Tribunal that the deceased was working as a Security Guard and was also doing agricultural business and earned Rs.30,000/- per month. However, there is no documentary proof filed to establish the said fact.

13.Considering the year of the accident, the age and avocation of the deceased, this Court is of the view that it would be just and reasonable to



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fix the notional income at Rs.15,000/- per month. The appellants would be entitled to 10% enhancement towards future prospects. Therefore, the award under the head loss of dependency has to be Rs.15,000+1,500(16,500)x12 x11 x2/3 (one third has to be deducted towards personal expenses) = Rs.14,52,000/-. The award under the other heads is just and reasonable and the same is confirmed. Thus, the award is modified as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>	<i>Award amount enhanced or reduced or confirmed</i>
1	Loss of dependency	11,13,200/-	14,52,000/-	Enhanced
2	Loss of consortium	1,20,000/-	1,20,000/-	Confirmed
3	Loss of estate	15,000/-	15,000/-	Confirmed
4	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	12,63,200/-	16,02,000/-	Enhanced by by Rs.3,38,800/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,63,200/- is hereby enhanced to Rs.16,02,000/- 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



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deposit the award amount, now determined by this Court, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of a copy of this judgment at the first instance and recover the same from the first respondent. Out of the award amount, the first appellant would be entitled to Rs.10,00,000/-, the second appellant would be entitled to Rs.4,02,000/- and the third appellant would be entitled to Rs.2,00,000/-. On such deposit, the appellants are permitted to withdraw their share of the award amount as per the apportionment 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.

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Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
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To

- 1.The Motor Accident Claims Tribunal
Special Sub Judge No.2,
Small Causes Court, Chennai.
- 2.The Section Officer,
VR Section,
Madras High Court.



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SUNDER MOHAN, J.

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