



C.M.A.No.2019 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2019 of 2022

- 1.Kosalai
- 2.Ravi
- 3.Anandh
- 4.Mallika
- 5.Sumathi
- 6.Sutha

... Appellants

Vs

- 1.Arivazhagan
- 2.The Branch Manager,
IFFCO TOKIO General Insurance Company Ltd.,
No.58, II Floor, Sri Anjaneyar Tower,
Pavala Nagar, Pondy to Villupuram Main Road,
Reddiarpalayam,
Pondicherry.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.11.2021 in MCOP.No.149 of 2019 on the file of the Motor Accident Claims Tribunal (Special Court I) Jayankondam.



WEB COPY



C.M.A.No.2019 of 2022

For Appellants : Mr.P.Parthikannan

For Respondents : Mr.M.Jayaraj, for R2
No Appearance for R1

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 30.11.2021 made in MCOP.No.149 of 2019 on the file of the Motor Accident Claims Tribunal (Special Court I) Jayankondam.

2. The appellants filed M.C.O.P. No.149 of 2019 on the file of the the Motor Accident Claims Tribunal (Special Court I), Jayankondam claiming a sum of Rs.20,00,000/- as compensation for the death of one Sellammal, who died in the accident that took place on 22.06.2019.

3. According to the appellants, on 22.06.2019 at about 07.15 pm, while the deceased Sellammal was walking on the road on Jayankondam to Chidambaram Highway from West to East direction on the extreme left side of the road, the Car bearing Registration No.TN-91-C-0951 driven by its



C.M.A.No.2019 of 2022

driver in a rash and negligent manner endangering public safety, came from behind and hit the deceased Sellammal and caused the accident; that in the above said accident, the said Sellammal sustained grievous injuries; that immediately she was admitted in the Jayankondam Government Hospital and died on the same day. Hence, the appellants filed claim petition claiming compensation against the respondents.

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

5. The second respondent filed counter statement denying all the averments made by the appellants in the claim petition. It is stated that the driver of the Car drove the same in slow and cautious manner from West to East direction, the deceased crossed half of the road from South to North and on seeing the car, returned to the southern side, in such a pell-mell, she fell down on the road and sustained head injuries; that the accident occurred only due to the negligent act of the deceased; that the second respondent is not liable to pay compensation to the appellants; and that the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.



C.M.A.No.2019 of 2022

6. The 4th appellant examined herself as PW1 and one Selvaraj, eye-witness to the accident was examined as PW2 and marked Ex.P.1 to Ex.P.11. The second respondent, did not examine any witness or marked any document.

7. The Tribunal after considering the evidence and documents filed on the side of the appellants, held that the accident occurred due to rash and negligent driving by the driver of the car and directed the second respondent to pay a sum of Rs.3,79,000/- as compensation to the fourth appellant and dismissed the claim petition as against the appellants 1 to 3, 5 and 6.

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

9. The learned counsel for the appellants submitted that the Tribunal had fixed a very meagre sum of Rs.4,500/- as notional income of the deceased, though the appellants had established that the deceased Sellammal was doing milk vending business. The Tribunal had erroneously



C.M.A.No.2019 of 2022

dismissed the claim petition filed by the appellants 1 to 3, 5 and 6 and awarded compensation only in favour of fourth appellant and therefore, the learned counsel prayed for enhancement of compensation.

10. Though notice has been served on the first respondent and his name is printed in the cause list, none appeared for him.

11. The learned counsel for the second respondent per contra submitted that the relationship of the parties have not been established. Even the 4th appellant had admitted in her evidence that the deceased is her maternal aunt and therefore, the Tribunal ought not to have awarded compensation in favour of the fourth appellant. The learned counsel further submitted that in the absence of any proof as regards income and avocation, the Tribunal was right in fixing the notional income as Rs.4,500/- and prayed for dismissal of the appeal.



C.M.A.No.2019 of 2022

WEB COPY

12. The questions involved in the instant appeal are-

- i) Whether the appellants have established their relationship with the deceased?
- ii) Whether the compensation awarded by the Tribunal is just and reasonable?

13. As regards the first question, this Court finds that the Tribunal has relied upon Ex.P8 to hold that the fourth appellant is the daughter of the deceased and therefore, entitled to compensation. Ex.P8 is the legal heir certificate in which, the fourth appellant is shown as the daughter of the deceased. Merely because there is a statement in the cross examination of PW.1, who is a rustic villager to the effect that the deceased was her “பொய்மகள்”, such a statement cannot disprove the certificate issued by the Revenue Authorities. No contra evidence has been let in on the side of the second respondent to disprove the relationship of the fourth appellant with the deceased. However, this Court finds that the Tribunal had rightly dismissed the claim in respect of other appellants who are the sisters and sister's children of the deceased. Therefore, this Court is of the view that the finding of the Tribunal holding that the fourth appellant is entitled to



C.M.A.No.2019 of 2022

compensation does not call for any interference by this Court.

WEB COPY

14. As regards compensation, the Tribunal had fixed the notional income of the deceased as Rs.4,500/- per month which is meagre. This Court, considering the age, avocation and the year of accident, the notional income can be fixed as Rs.9,000/- per month. The Tribunal held that the deceased was aged 60 years based on the postmortem certificate. This Court is of the view that the finding of the Tribunal fixing the age of the deceased cannot be faulted. Hence, the loss of dependency is calculated as follows:-

$$\text{Rs.9,000} \times 12 \times 9 \times 2/3 = \text{Rs.6,48,000/-}$$

No amount was awarded towards loss of estate by the Tribunal. Therefore, a sum of Rs.15,000/- is awarded towards loss of estate. 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.3,79,000/- to Rs.7,18,000/-, break-up is as follows -



C.M.A.No.2019 of 2022

WEB COPY

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	3,24,000/-	6,48,000/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of love & Affection	40,000/-	40,000/-	Confirmed
4.	Loss of estate	-	15,000/-	Awarded
	Total	3,79,000/-	7,18,000/-	Enhanced by Rs.3,39,000/-

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed in respect of fourth appellant. As regards other appellants 1 to 3, 5 and 6, the Civil Miscellaneous Appeal stands dismissed. The compensation awarded by the Tribunal at Rs.3,79,000/- is hereby enhanced to Rs.7,18,000/- 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 / 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 six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the fourth



C.M.A.No.2019 of 2022

appellant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. The fourth appellant is directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

23.08.2023

Index: Yes/No
Neutral Citation: Yes/No
AT

To
1.The Motor Accident Claims Tribunal
(Special Court I) Jayankondam.

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



WEB COPY



C.M.A.No.2019 of 2022

SUNDER MOHAN, J.

AT

C.M.A.No.2019 of 2022

23.08.2023