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C.M.A. No.2035 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.2035 of 2022

1.Saminathan
2.Balakrishnan
3.Senthilkumar
4.Santhi
5.Poongodi
6.Ezhilarasi

...Appellants

Vs.

1.Balakrishnan

2.The Manager,
United India Assurance Company Ltd,
TVK Complex, No.49/A1, Chidambaram Road,
Jayankondam, Udayarpalayam Taluk,
Ariyalur District.

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree of the Motor Accident Claim Tribunal (Principal District and Sessions Court), Ariyalur in MCOP. 36 of 2019 dated 21-10-2021.



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For Appellants : Mr.P.Parthikannan

For Respondents : No appearance for R1
Ms. Rathana Thara for R2

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 21.10.2021, made in M.C.O.P. No.36 of 2019 on the file of the Motor Accident Claims Tribunal (Principal District & Sessions Court) Ariyalur.

2. The appellants filed M.C.O.P. No.36 of 2019 on the file of the Motor Accident Claims Tribunal (Principal District & Sessions Court) Ariyalur claiming a sum of Rs.20,00,000/- as compensation for the death of one Susila, who died in an accident that took place on 15.05.2018.

3. According to the appellants, on 15.05.2018 at about 6.00 A.M, while the deceased Susila was proceeding as a pillion rider in a Hero Honda Super Splendor bearing Regn.No.TN 61 C 7800, the rider of the motorcycle drove



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the same from West to East direction in a rash and negligent manner, hit a speed breaker and fell down; that due to the accident, the said Susila sustained grievous injuries on the head; that the deceased was treated initially at Government Hospital, Jayakondam and Meenakshi Hospital Tanjavur. Subsequently, on 24.05.2018, when she was transferred for further treatment to the Appollo Hospital, she died on the way in the ambulance; that the deceased was aged 63 years at the time of the accident and was earning Rs.30,000/- per month. Hence, the appellants filed a claim petition claiming compensation against the respondents.

4. The 1st respondent remained ex-parte before the Tribunal.

5. The 2nd respondent filed a counter statement and denied all the averments made by the appellants in the claim petition and stated that the accident did not occur due to the negligent riding by the rider of the two-wheeler; that the 1st respondent did not have a valid driving license at the time of the accident; the deceased did not wear helmet at the time of the



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accident; that the 2nd respondent also denied the age, occupation and monthly income of the deceased; that the total compensation claimed by the appellants are excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellants examined four witnesses as P.W.1 to P.W.4 and marked nine documents as Exs.P.1 to P.9. The second respondent neither marked any document nor examined any witness on their side.

7. The Tribunal, after considering the evidence and documents filed on the side of the appellants, held that the accident occurred due to the rash and negligent riding by the rider of the offending vehicle belonging to the first respondent and directed the second respondent/Insurance Company being the insurer of the said two-wheeler to pay a sum of Rs.5,21,153/- as compensation to the appellants.



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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 not awarded the compensation under the head Loss of Income, though the appellants had proved through P.W.1, that the deceased was doing milk business and was earning nearly Rs.1000/- per day. The learned counsel further submitted that admittedly, the deceased was in the Hospital before she passed away; that, however, the Tribunal had not awarded compensation under the head Attender Charges or for Transport Expenses. Hence, the learned counsel submitted that the compensation awarded by the Tribunal has to be enhanced.

10. Though notice has been served on the 1st respondent, none has entered an appearance on his behalf.



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11. The learned counsel for the second respondent, per contra, submitted that the deceased was aged 63 years and no document was produced by the appellants, even to establish the avocation of the deceased; that therefore, the Tribunal was right in declining the claim of compensation under the head Loss of Income. The learned counsel further submitted that the compensation awarded under the other heads is just and reasonable and prayed for dismissal of the appeal.

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

13. The only question before this Court is whether the compensation awarded by the Tribunal is just and reasonable?

14. It is seen from the records that P.W.1, examined on behalf of the appellants had stated that the deceased was doing milk business and that she had cows at home. In the light of the facts, it cannot be said that the deceased



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did not have any income. However no documentary proof was produced to establish the income earned by the deceased. Therefore, this Court is of the view that the notional income can be fixed to compute the loss of income. Considering the age of the deceased, the fact that she was doing milk business and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.7,500/- per month, including the future prospects. The deceased was aged 63 years, at the time of the accident, and hence, the multiplier applicable is 7. Though the dependants are married, this Court is of the view that in the facts 1/3rd of her income has to be deducted towards personal expenses. Thus, by fixing notional income at Rs.7500/- per month, applying multiplier 7 and deducting 1/3rd towards personal expenses of the deceased, the compensation awarded by the Tribunal under the head Loss of Income is calculated as follows:-

$$\text{Rs.7500 X 12 X 7 X 2/3} = 4,20,000/-$$

15. This Court also finds that the Tribunal had not awarded any compensation under the heads Attender Charges and Transport Expenses. Since the deceased was admitted to the Hospital, this Court is of the view that



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the appellants are also entitled to Attender Charges and the Transport Expenses at Rs.10,000/- each under the above-said heads. Accordingly, a sum of Rs.10,000/- each is awarded towards Attender Charges and Transport Expenses. The compensation awarded under other heads is just and reasonable, and hence, the same is confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.5,21,153/- to Rs.9,61,153/-, 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 Income	---	4,20,000/-	Granted
2.	Loss of parental consortium	40,000/-	40,000/-	Confirmed
3.	Loss of love and affection	15,000/-	15,000/-	Confirmed
4.	Loss of Consortium	40,000/-	40,000/-	Confirmed
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
6.	Medical Expenses	4,11,153/-	4,11,153/-	Confirmed



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7.	Attender Charges	---	10,000/-	Granted
8.	Transport Expenses	---	10,000/-	Granted
	Total	5,21,153/-	9,61,153/-	Enhanced by Rs.4,40,000/-

16. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,21,153/- is hereby enhanced to Rs.9,61,153/- 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 enhanced 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 a copy of this Judgment. On such deposit, the appellants are permitted to withdraw their share of the award amount along with proportionate interest and costs, less the amount, if any, already withdrawn, on the basis of apportionment fixed by



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the Tribunal. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

25.07.2023

dk/spp

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1.The Motor Accident Claims Tribunal,
Principal District and Sessions Court,
Ariyalur

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



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SUNDER MOHAN, J.

dk/spp

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