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C.M.A.No.2587 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.2587 of 2022

1.Muthulakshmi

2.Devi

3.Sankar

4.Dhanam

... Appellants

Versus

1.Bhavani

2.United India Insurance Company Ltd.,
Rep. by its Manager,
No.6/3 B, First Floor,
R.C.C. Building,
Baikkaratheru, Aaduthurai Main Road,
Thanjavur District.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 30.09.2021 passed in M.C.O.P.No.243 of 2019, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Ariyalur.

For Appellants : Mr.P.Parthikannan

For R1 : No Appearance

For R2 : Mr.P.Sankar Narayanan

JUDGMENT

The appellants/claimants have preferred the instant appeal seeking enhancement of compensation.



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2.The appellants/claimants filed the claim petition stating that on 06.04.2019 at about 8.30 p.m., while the deceased was riding bicycle on a public road, a car insured with the 2nd respondent came in a rash and negligent manner, dashed against the bicycle of the deceased; that as a result of which, the deceased sustained fatal injuries.

3.The 1st respondent-owner of the offending vehicle remained *ex-parte* before the Tribunal.

4.The 2nd respondent-Insurance Company filed a counter stating that the accident took place only due to the negligence of the deceased and that in any case, the compensation claimed by the appellants was excessive and prayed for dismissal of the claim petition.

5.The appellants examined P.W.1 and P.W.2 and marked Exs.P1 to P8 on their side. The 2nd respondent neither examined any witness nor marked any document.

6.The Tribunal after taking into consideration of the oral and documentary evidence, held that the accident took place due to the



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negligence of the driver of the car, insured with the 2nd respondent and directed the 2nd respondent to pay a compensation of Rs.9,33,875/- to the appellants.

7.The learned counsel for the appellants submitted that though the accident took place in the year 2019 and the appellants had established that the deceased was working as an agricultural coolie, the Tribunal had fixed the meagre notional income of the Rs.7500/- per month; that the Tribunal had not awarded any compensation under the head loss of love and affection to the appellants 2 to 4 and hence prayed, for enhancement of compensation.

8.Though notice was duly served on the 1st respondent and the name of the 1st respondent is printed in the cause list, none entered appearance on behalf of her.

9.Mr.P.Sankar Narayanan, learned counsel for the 2nd respondent submitted that the deceased was aged about 55 years at the time of accident and since there was no evidence either to prove the avocation and the income of the deceased, the Tribunal was right in fixing the



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notional income and prayed for dismissal of the appeal.

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

11.On perusal of the records, it is seen that P.W.1-wife of the deceased was examined to prove that the deceased was working as agricultural coolie. Considering the age of the deceased, number of dependants and the year of accident, this Court is of the view that it would be just and reasonable to fix a sum of Rs.11,000/- as notional income. The multiplier applicable is 11. By adding 10% towards future prospects and after deducting 1/4th towards personal expenses, the compensation under the head loss of dependancy would be as follows:

$$\text{Rs.12,100/- } (11000 + 1100) \times 12 \times 11 \times 3/4 = \text{Rs.11,97,900/-}.$$

The appellants 2 to 4 are each entitled to Rs.40,000/- each towards loss of love and affection. The amount of compensation awarded by the Tribunal under other heads is just and reasonable and the same are confirmed.

Thus, the compensation awarded by the Tribunal is modified as follows:-



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	8,53,875	11,97,900	Enhanced
2.	Loss of Estate	15,000	15,000	Confirmed
3.	Loss of Consortium	40,000	40,000	Confirmed
4.	Transport Expenses	10,000	10,000	Confirmed
5.	Funeral Expenses	15,000	15,000	Confirmed
6.	Loss of Love and Affection	-	1,20,000	Granted
	Total	9,33,875	13,97,900	Enhanced by Rs.4,64,025/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,33,875/- is hereby enhanced to Rs.13,97,900/-, 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 2nd 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 appellants are permitted to withdraw



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their respective share of the award amount now determined by this Court,
as per the apportionment fixed 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.

25.09.2023

rst/dpa

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

- 1.The Motor Vehicle Accident Tribunal,
Additional District Judge, Ariyalur.
- 2.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

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