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CMA No. 2446 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2446 of 2022

1.Kantu Sivaramaih

2.Kantu Narayanamma

... Appellants

Versus

1.M/s.Sri Lakshmi Venkata Narayana Rice Industries,
Represented by R. Venkateswarlu,
Narayana Reddy Petta Village,
Nellore Rural, Andhra Pradesh – 524002.

2.The Manager,
Bharati Axa General Insurance Co.Ltd.,
2nd Floor, Metro Plaza,
No.162, Anna Salai, Chennai – 600 002.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to enhance the compensation awarded in the Judgment and Decree dated 10.02.2017 made in M.C.O.P. No. 284 of 2015 on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruvallur.

For Appellants : Mr. K. Naveen Kumar.

For Respondents : Mr. B. Sivakollapan for R2.

R1 - Exparte.



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J U D G M E N T

The appeal has been filed by the appellants challenging the award passed by the Tribunal in M.C.O.P. No. 284 of 2015 dated 10.02.2017.

2.The appellants had filed a claim petition before the Tribunal stating that on 05.04.2015, while the deceased was going by walk on the extreme left side of the road near Sri City Zero Point, Tada Village & Mandal on NH road, a car bearing Registration No.AP-26-BA-9988 driven by its driver in a rash and negligent manner from Chennai to Nellore, dashed the deceased, as a result of which the deceased sustained severe injuries and died on the spot. Thus, the appellants filed claim petition claiming compensation.

3.The second respondent filed counter denying all the averments made in the claim petition. They stated that the deceased who was walking as a pedestrian suddenly tried to cross the road from East to West without noticing on-going vehicles and hence the car which was proceeding in a normal speed dashed the deceased and hence, the appellants are not entitled for any compensation. In any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.



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WEB COPY 4.The first respondent remained exparte before the Tribunal.

5.The appellants examined two witnesses as PW1 and PW2 on their side and marked Ex.P.1 to Ex.P.11. On the side of the second respondent, RW1 has been examined and Ex.R.1 has been marked.

6.The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the negligence of the driver of the car belonging to the first respondent and directed the second respondent to pay a sum of Rs.12,05,000/- as compensation to the appellants. Aggrieved by the said award, the appellants have preferred the instant appeal seeking enhancement of compensation.

7.The learned counsel for the appellants submitted that the compensation awarded by the Tribunal is meagre. Though the appellants have established that the deceased was an engineering graduate and working in a private concern and produced ID card and degree certificate to substantiate the same, the Tribunal had fixed the notional income at Rs.12,000/- per month which is very low. The learned counsel relied



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upon the Division Bench Judgment of this Court in ***Managing Director,***

Tamil Nadu State Transport Corporation Limited Vs. Neela and other

reported in ***2019 (2) TN MAC 153 (DB)*** wherein the Division Bench of this Court has confirmed the finding of the Tribunal fixing the notional income at Rs.20,000/- per month for the accident of a engineering graduate that occurred in the year 2015. The Tribunal failed to award 40% enhancement towards future prospects. The learned counsel therefore prayed that the compensation has to be enhanced and prayed for allowing the appeal.

8.Though notice has been served, none has entered appearance on behalf of the first respondent.

9.Per contra, the learned counsel for the second respondent submitted that no document was produced to prove the income of the deceased. The employer was not examined and the bank statement of the deceased was also not produced to prove the income. Therefore, the Tribunal was right in fixing the notional income as Rs.12,000/- per month and prayed for dismissal of the appeal.



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

11.The appellants had examined PW1 father of the deceased and marked Ex.P.5 provisional certificate to prove the educational qualification of the deceased. The appellants have also marked Ex.P.6 Identity card issued by a private firm by name Integrated Electronics. However, the employer of the deceased was not examined. The appellants have also not proved the income said to have been earned by the deceased. Though the learned counsel for the appellants submitted that the Division Bench of this Court had confirmed the finding of the Tribunal fixing the notional income at Rs.20,000/- in respect of an engineering graduate for the accident in the year 2015, this Court is of the view that fixing of notional income would depend on the facts and circumstances of each case. In the instant case, considering the age, educational qualification and the avocation, this Court is of the view that it would be just and reasonable to fix Rs.15,000/- per month as notional income for the deceased. The deceased was aged 37 years at the time of accident and the appellants are entitled to 40% future prospects. 50%



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has to be deducted towards personal expenses as the deceased was a bachelor. Hence, the loss of income would be Rs.15,000/- + Rs.6,000/- (40% of Rs.15,000) = Rs.21,000 X 12 X 15 X ½ = Rs.18,90,000/-. The compensation awarded under the head Loss of Love and Affection is on the higher side and the same is reduced from Rs.1,00,000/- to Rs.80,000/-. Further, the compensation awarded under the head Funeral expenses is also on the higher side and the same is reduced from Rs.25,000/- to Rs.15,000/-. Since no amount has been awarded under the head Loss of estate, Rs.15,000/- is granted under the said head. Thus, the award of the Tribunal is modified as follows;

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	10,80,000	18,90,000	Enhanced
2.	Loss of love and affection	1,00,000	80,000	Reduced
3.	Loss of estate	---	15,000	Granted
4.	Funeral expenses	25,000	15,000	Reduced
	Total	12,05,000	20,00,000	Enhanced by Rs.7,95,000/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at



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Rs.12,05,000/- is hereby enhanced to Rs.20,00,000/- together with interest at 7.5% per annum excluding the default period of 1713 days from the date of petition till the date of deposit. The second respondent 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 four (4) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellants are permitted to withdraw their respective shares of the award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The appellants are directed to pay necessary Court fee, if any on the enhanced compensation. No costs.

16.08.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accident Claims Tribunal,
Special District Court,
Tiruvallur.



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2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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