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C.M.A.No.1624 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1624 of 2022

1.Sujatha
2.Karthik Kumar
3.Bhanuprasanna Kumar

...Appellants/Petitioners

Vs.

1.Y.C.Krishnaiah
2.The Manager,
IFFCO – Tokio General Insurance Company Ltd.,
Motor T.P.Claims,
N.No-28, Old No.195,
North Usman Road, T.Nagar,
Chennai – 600 017.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 seeking for enhancement of the compensation amount awarded in the Judgment and Decree dated 04.08.2021 made in M.C.O.P.No.143 of 2019 on the file of the Special Motor Accident Claims Tribunal Judge/the Special Sub Judge (MCOP), Thiruvallur.



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For Appellants : Mr.P.Muthusamy

For Respondents : No appearance for R1
Mr.S.Arunkumar for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants challenging the findings of the Tribunal as regards liability as well as the quantum of compensation granted by the Tribunal in the award dated 04.08.2021 made in M.C.O.P.No.143 of 2019 on the file of the Motor Accident Claims Tribunal, No. I, Special District Court, Thiruvallur.

2. The appellants filed M.C.O.P.No.143 of 2019 on the file of the Motor Accident Claims Tribunal, No. I, Special District Court, Thiruvallur, claiming a sum of Rs.25,00,000/- as compensation for the death of one Mr.Sundaramurthy, who died in a road accident that took place on 30.12.2018.



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3. According to the appellants, on 30.12.2018 at about 8:45 P.M, when the deceased was standing extreme left side of the road in front of Arogya Milk Center, Trunk road, Vardaiahpalem Village, Chittoor District, Andrapradesh, a Motor Cycle bearing Reg.No.AP-03-CR-0409 driven by its rider in a rash and negligent manner, dashed against the deceased. As a result, the deceased fell down on the road, he suffered injuries all over the body. The deceased was treated initially at Government Hospital, Srikalahasthi and on the same day shifted to SVRRGG Hospital, Tirupathi and died on 05.01.2019. The deceased was earning Rs.20,000/- per month at the time of the accident, and hence, he was entitled to compensation of Rs.25,00,000/-.

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

5. The 2nd respondent/Insurance Company filed a counter statement denying all the averments made in the claim petition and stated that the 1st respondent/rider of the two wheeler was not at all involved in the accident; that the rider of the motor cycle bearing Reg.No.AP-03-CR-0409 was



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proceeding towards Srikalahasthi in a slow and cautious manner observing all traffic rules and regulations; that the deceased who was standing in front of Arogya Milk Center, Trunk road, Varadaiahpalem Village, Chittoor District, Andra Pradesh, without observing the traffic rules and regulations and without noticing vehicles on the road, suddenly, tried to cross the road and came into the path of the 1st respondent's vehicle, hit against the same, fell down and invited the accident; that the accident occurred only due to the negligent act of the deceased; that the rider of the Motor Vehicle did not have a valid license at the time of the accident and hence, the 2nd respondent was not liable to pay any compensation to the appellants and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellants examined two witnesses as P.W.1 and P.W.2 and marked seven documents as Exs.P.1 to P.7. The respondents examined two witnesses as R.W.1 and R.W.2 and marked five documents as Exs.R1 to R5.



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7. The Tribunal, after considering the oral and documentary evidence adduced on the side of the appellants and the respondents, held that the accident occurred due to the rash and negligent riding by the rider of the offending vehicle bearing Reg.No.AP-03-CR-0409 and directed the 1st respondent to pay a sum of Rs.7,92,800/- as compensation to the appellants. The Tribunal dismissed the claim petition against the 2nd respondent.

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 though the first respondent had a valid insurance policy with the second respondent, the Tribunal had erroneously fixed the liability on the first respondent for violations of policy conditions; that the Tribunal had held that since the first respondent did not have a valid driving license, the second respondent was not liable to pay compensation; that the Tribunal ought to have directed the second respondent to pay the compensation at the first instance and recover



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the same from the 1st respondent for violations of policy conditions.

The learned counsel further submitted that the quantum of compensation awarded by the Tribunal is meagre; that the deceased was aged 58 years at the time of the accident; that the notional income of Rs.9,000/- per month fixed by the Tribunal is also meagre; that considering the Cost Inflation Index, the Tribunal ought to have fixed the notional income at Rs.15,000/- per month. The learned counsel further submitted that though there were three dependants, Loss of Consortium was awarded only to the 1st appellant; that the appellants two and three are also entitled to compensation under the head Loss of Love and Affection at Rs.40,000/- each; that the deceased met with the accident on 30.12.2018 and died on 05.01.2019 and that the appellants are entitled to compensation under the heads Pain and Suffering and Attender Charges and hence, prayed for enhancement of compensation.

10.Though notice has been served on the 1st respondent, there is no representation for the 1st respondent.



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11. The learned counsel for the 2nd respondent, per contra, submitted that the findings of the Tribunal that the 1st respondent is liable to pay compensation for violation of policy conditions cannot be faulted; that the award of the Tribunal is just, since the deceased was survived by his wife and his two major sons, who were working and were not dependents on the deceased; that the appellants did not produce any proof of income of the deceased and hence, the notional income fixed by the Tribunal at Rs.9,000/- per month is just and reasonable; that the award of compensation under the other heads is just and reasonable; that hence, the compensation awarded by the Tribunal need not be interfered with; and prayed for dismissal of the appeal.

12. Heard the learned counsel for the appellants as well as the learned counsel for the 2nd respondent and perused the materials available on record.

13. This Court finds, that admittedly, the 1st respondent had a valid insurance policy with the second respondent. The 1st respondent had violated the policy conditions by riding the offending two wheeler without a valid



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driving license. The fact that the 1st respondent did not have a valid driving license has been established before the Tribunal. This Court is of the view that since the 1st respondent has violated the policy conditions, he is liable to pay compensation. However, the 2nd respondent is liable to pay the compensation amount at the first instance and recover it from the 1st respondent.

14. As regards compensation, it is seen that the notional income fixed by the Tribunal at Rs. 9,000/-, for the accident which took place in the year 2018 is meagre. Considering the Cost Inflation Index and the fact that even earnings of the daily wages labourers had increased by then, this Court is of the view that notional income can be fixed at Rs.11,000/- per month. The deceased was aged 57 years at the time of the accident. Hence, the appellants are entitled to a 10% enhancement towards future prospects. The multiplier applicable is '9'. Hence, the compensation awarded by the Tribunal under the head Loss of Earning is calculated as follows:

$$\text{Rs.11,000/-} + 1100 (11,000 \times 10\%) \times 12 \times 9 \times 2/3 = \text{Rs.8,71,200/-}$$



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WEB COPY 15. This Court also finds that the Tribunal has not awarded compensation under the head Loss of Love and Affection to the appellants 2 and 3. They are entitled to compensation of Rs.40,000/ each towards the aforesaid head. Further, the deceased was admitted to the Hospital for seven days. Hence, the appellants are entitled to compensation of Rs. 10,000/- towards Pain and Suffering and Rs.10,000/- under the head Attender Charges.

16. The compensation awarded by the Tribunal under other heads is just and reasonable and hence, the same is confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.7,92,800/- to Rs.10,51,200/- 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 earning	7,12,800/-	8,71,200/-	Enhanced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed



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3.	Loss of Consortium	40,000/-	40,000/-	Confirmed
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
5.	Transport to hospital expenses	10,000/-	10,000/-	Confirmed
6.	Loss of Love and Affection (respondents 2 and 3 only)	---	Rs.80,000/- (Rs.40,000/-X 2)	Granted
7.	Pain and Sufferings	---	Rs.10,000/-	Granted
8.	Attender Charges	---	Rs.10,000/-	Granted
	Total	7,92,800/-	10,51,200/-	Enhanced by Rs.2,58,400/-

17. With the above modification, this Civil Miscellaneous Appeal is partly allowed, and the compensation awarded by the Tribunal at Rs.7,92,800/- is hereby enhanced to Rs.10,51,200/- 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



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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 receipt of a copy of this Judgment, at the first instance and recover the same from the first respondent. On such deposit, the appellants are permitted to withdraw their respective 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 the Tribunal. 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

Neutral Citation: Yes / No

Copy to

1. The Special Motor Accident Claims Tribunal Judge/
The Special Sub Judge (MCOP), Thiruvallur.
2. The Section Officer,
VR Section,
High Court,
Madras.



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SUNDER MOHAN, J

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