



WEB COPY



C.M.A. No.1377 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1377 of 2023

1.E.Mohamed Ali

2.Sharbunisha

.. Appellants

Vs.

1.S.Senthil Kumar

2.Reliance General Insurance Company Ltd.,

Legal Claims Office, No.6, 6th Floor,

Reliance House, Haddows Road,

Nungambakkam, Chennai – 600 034.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the order made in M.C.O.P.No.2971 of 2019 dated 18.07.2022 on the file of the Motor Accident Claims Tribunal, (Chief Judge, Court of Small Causes, at Chennai).

For Appellants : Mr.S.K.Raghavan

For Respondent

(For R1) : Exparte

(For R2) : Mr.P.Suresh Srinivasan



C.M.A. No.1377 of 2023

J U D G M E N T

WEB COPY

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 18.07.2022 made in M.C.O.P.No.2971 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

2.The appellants filed M.C.O.P. No. 2971 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai, claiming a sum of Rs.53,97,600/- as compensation for the death of one M.A.Fazhulul Rahman, who died in a motor accident that took place on 01.11.2018.

3. According to the appellants, on 01.11.2018 at about 6.30 p.m., while the son of the appellants was travelling as a pillion rider in a motor cycle bearing registration No.TN73-S-8569 on Tambaram-Sriperumbudur Road towards Sriperumbudur, near Navallur opposite to Madras Engineering Industries, a TATA Truck heavy vehicle bearing Registration No.TN19-AA-



C.M.A. No.1377 of 2023

0074, which came from the opposite direction driven in a rash and negligent manner hit against the motorcycle and caused the accident. In the above said accident, the said M.A.Fazhulul Rahman sustained fatal injuries and died on the spot. Hence, the appellants filed claim petition claiming compensation against the respondents.

4. The 2nd respondent filed counter statement denying all the averments made by the appellants in the claim petition and stating that the petition is liable to be dismissed for non-joinder of necessary parties, that hence the 2nd respondent is not liable to pay compensation to the appellants; and that in any event the total compensation claimed by the appellants was excessive and prayed for dismissal of the claim petition.

5. The 2nd appellant examined herself as PW1, one Mr.M.Elamvazhuthi, eye-witness to the accident as PW3, and one Mrs.Rajathi, Proprietrix of Auto Flux Technologies as PW4. The Respondent neither examined any witness nor marked any documents.



C.M.A. No.1377 of 2023

6. 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 driving of the TATA Truck and directed the 2nd respondent to pay a sum of Rs.19,74,826/- as compensation to the appellants. Aggrieved by the said order, the appellants have preferred the present appeal, seeking enhancement of compensation.

7. The learned counsel appearing for the appellants submitted that the quantum of compensation awarded by the Tribunal is meagre. The learned counsel further submitted that though appellants examined P.W.4 to prove the income of the deceased, the Tribunal has fixed meagre notional income as Rs.12,000/-. The deceased was an Engineering Graduate and was working as a Project Engineer in M/s.Auroflux Technologies Private Limited, earning a sum of Rs.19,000/- plus Rs.10,000/- by way of other allowances (Miscellaneous Allowances) in all Rs.29,000/- per month. In the absence of any contra evidence, the Tribunal ought to have considered the said amount as monthly income. Therefore, the learned counsel for the appellants prayed for enhancement of compensation.



C.M.A. No.1377 of 2023

8. Per contra, the learned counsel for the 2nd respondent submitted that even as per the documents filed on behalf of the appellants, the deceased was only receiving Rs.12,000/- per month. The entries in the Bank Passbook would reveal that Rs.12,000/- was only credited to the account of the deceased. Therefore, the Tribunal was right in fixing the monthly income of the deceased as Rs.12,000/- per month. The award of compensation under the other heads are just and reasonable and prayed for dismissal of the appeal.

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

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

11. The appellants questioned the award only with regard to fixing of the notional income of the deceased. The documents filed on behalf of the appellants revealed that a sum of Rs.12,000/- was credited to the account of the deceased every month by his employer, who was examined as P.W.4.



C.M.A. No.1377 of 2023

However, it is seen that P.W.4 has deposed that the deceased was also earning Night allowances and other allowances like Conveyance Allowances and Travelling Allowances to the tune of Rs.8,000/- per month besides the regular salary. P.W.4 has also stated that the gross income of the deceased was a sum of Rs.20,000/- at the time of accident.

12. The Conveyance Allowance and Travelling allowance cannot be treated as his income. However, the deceased would have earned Night allowance as stated by PW4 and hence Rs.3,000/- can be added while fixing the income. Therefore, this Court is of the view that it would be just and reasonable to fix the notional income of the deceased as Rs.15,000/- per month, taking into consideration all the aforesaid facts. The deceased was aged 23 years at the time of accident. Hence, the appellants are entitled to get 40% towards Future Prospects and the applicable multiplier is 18. The deceased died as a bachelor. Thus, deducting 50% towards personal expenses, the award of compensation under the Head 'Loss of Income' is calculated as follows:-

$$\text{Rs.15,000/-} + \text{Rs.6,000/-} (15000 \times 40\%) \times 12 \times 18 \times 50\% = \text{Rs.22,68,000/-}$$



C.M.A. No.1377 of 2023

13. The compensation awarded by the Tribunal under other heads are just and reasonable and hence the same are confirmed. Thus, the total award of the Tribunal is modified in the following manner:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	18,14,400/-	22,68,000/-	Enhanced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	Loss of Consortium Rs.40,000/- (Each)x2	80,000/-	80,000/-	Confirmed
4.	Medical Expenses	50,426/-	50,426/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	19,74,826/-	24,28,426/-	Enhanced by Rs.4,53,600/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.19,74,826/- is hereby enhanced to Rs.24,28,426/- 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



C.M.A. No.1377 of 2023

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 1 and 2 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 the Tribunal. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

11.08.2023

kak

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Chief Judge,
Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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



WEB COPY



C.M.A. No.1377 of 2023

SUNDER MOHAN, J.

kak

C.M.A. No. 1377 of 2023

11.08.2023