



C.M.A.No.2105 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 26.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.2105 of 2023

1.Regina Dhayalamary
2.Rajakumari
3.L.M.Sarvanan
4.Pugazhenth

... Appellants

Versus

1.Chinnasamy

2.The Divisional Manager,
Sri Ram General Insurance Company Ltd.,
E-8, EPIP, RIICO, Sitapuram Jaipur,
Rajasthan – 302 022.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 15.02.2019 passed in M.A.C.T.O.P.No.1557 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub-Court, Thiruvannamalai.

For Appellants : Mr.A.Subadra

For R2 : Ms.R.Sreevidhya

JUDGMENT

The claimants have preferred the above appeal seeking enhancement of compensation.



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2.The appellants filed the claim petition stating that on 14.09.2013

at about 2.00 pm, while the deceased was riding a motorcycle on a public road, the driver of a Mahindra and Mahindra Bolero Maxi Truck insured with the 2nd respondent herein came in the opposite direction in a rash and negligent manner, hit the motorcycle of the deceased; that as a result of which, the deceased sustained fatal injuries and hence, the appellants are entitled for compensation.

3.The 1st respondent – owner of the offending vehicle remained *ex-parte* before the Tribunal. The 2nd respondent filed a counter stating that the accident took place only due to the negligence of the deceased; that the driver of the vehicle insured with the 2nd respondent did not have license and hence, they are not liable to pay compensation; and that in any case, the compensation claimed by the appellants was excessive.

4.Before the Tribunal, the appellants examined PW.1 and PW.2 and marked Ex.P1 to Ex.P8. The 2nd respondent examined RW.1 and RW.2 and marked Ex.R1 and Ex.R2.



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5.The Tribunal after taking into consideration the oral and documentary evidence, held that the accident took place due to the negligence of the driver of the insured vehicle; that the driver did not have valid license and hence, the 2nd respondent is liable to pay Compensation of Rs. 14,02,732/- at the first instance and recover the same from the 1st respondent.

6.The learned counsel for the appellants submitted that the compensation awarded by the Tribunal is meagre, in as much as a very low notional income of Rs.7,000/- per month was fixed by the Tribunal and hence, the learned counsel prayed for enhancement of compensation.

7.It is seen that the 1st respondent had received notice in the condone delay petition and remained absent. The learned counsel for the appellants submitted that since 1st respondent remained *ex-parte* before the Tribunal, notice may be dispensed with and hence, notice to the 1st respondent is dispensed with.

8.The learned counsel for the 2nd respondent per contra submitted the Tribunal ought not to have deducted 1/3rd towards personal expenses



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as the wife of the deceased is no more; that the claim petition was filed by the mother and in-laws of the deceased and therefore 50% of the income has to be deducted towards personal expenses; that the award of the Tribunal under other heads are just and reasonable and prayed for dismissal of the appeal.

9.The only question involved in the instant appeal is whether the award of compensation is just and reasonable?

10.On perusal of the records, it is seen that P.W.1, the mother of the deceased had deposed before the Tribunal that the deceased was working as an Electrician cum Electrical Contractor and earning a sum of Rs.20,000/- per month, However, no document has been filed by the appellants either to prove the avocation or income of the deceased. Considering the age of the deceased, his avocation and the year of accident, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.13,000/- per month. The appellants are entitled to 40% enhancement towards future prospects and the multiplier applicable is 17. The deceased was aged 29 years at the time of accident. It is seen that the deceased along with his wife died in the same accident.



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This Court is of the view that the deceased would have spent 1/3rd towards personal expenses as he was a married person and therefore, the said finding of the Tribunal is justified. Thus, the compensation under the head loss of income has to be as follows:-

$$\text{Rs.18,200/-}(\text{Rs.13,000} + 40\%) \times 12 \times 17 \times 2/3 = \text{Rs.24,75,200/-}$$

The amount 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:-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	13,32,732	24,75,200	Enhanced
2.	Loss of Estate	15,000	15,000	Confirmed
3.	Funeral Expenses	15,000	15,000	Confirmed
4.	Love and Affection	40,000	40,000	Confirmed
	Total	14,02,732	25,45,200	Enhanced by Rs.11,42,468/-

11. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,02,732/- is hereby enhanced to Rs.25,45,200/-, together with interest at the rate of 7.5% per annum (excluding the default period, if



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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 at the first instance and recover the same from the 1st respondent. On such deposit, as per the direction of the Tribunal, the 1st appellant is permitted to withdraw the entire award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn. The 1st appellant is directed to pay the necessary Court fee, if any, on the enhanced award amount. No costs.

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The Special Sub-Judge,
The Motor Vehicle Accident Tribunal,
Thiruvannamalai.

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



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SUNDER MOHAN, J.

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