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CMA No. 1352 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1352 of 2022

1.Krishnaraj

2.Vanitha

... Appellants

Versus

1.The President,

Sri Vidhya Mandhir Higher Secondary School,
Pethampatty, Rajapalayam PO,
Attaiyampatty (Via), Salem.

2.Cholamandalam, M/s.General Insurance Company,
Door No.103/1, Peramanur Main Road,
Salem – 7.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment dated 03.02.2022 made in M.C.O.P. No. 1097 / 2020 on the file of the Special District Judge, Motor Accident Claims Tribunal, Salem by allowing this Civil Miscellaneous Appeal.

For Appellants : Mr. P. Jagadeesan.

For Respondents : Ms. R. Sreevidhya for R2.

No appearance for R1.



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J U D G M E N T

The appeal has been filed by the appellants challenging the quantum of compensation awarded by the Tribunal in M.C.O.P. No. 1097 of 2020 dated 03.02.2022.

2.The appellants have filed the claim petition before the Tribunal stating that on 12.03.2020, when the deceased was riding a two wheeler bearing Registration No.TN-30 BQ-0374 in Attaiyampatty to Kakkapalayam Main Road, a School Van bearing Registration No. TN-42 C-2194 driven by its driver in a rash and negligent manner in the opposite direction, hit against the two wheeler as a result of which the deceased sustained grievous injuries and died. Thus, the appellants filed the claim petition seeking compensation.

3.The second respondent filed counter denying all the averments made in the claim petition stating that; The deceased was riding the two wheeler without wearing helmet; that he did not possess valid driving license at the time of accident; that hence, the deceased alone is responsible for the accident; that the petition is bad for non-joinder of



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owner and insurer of the two wheeler; and that the quantum of compensation claimed by the appellants are highly excessive and prayed for dismissal of the claim petition.

4.The first respondent remained ex-parte before the tribunal.

5.The appellants examined two witnesses on their side and marked Ex.P.1 to Ex.P.21. No witness was examined on the side of the second respondent and no document was marked.

6.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by the driver of the van belonging to the first respondent and awarded a compensation of Rs.11,45,000/- to the appellants to be paid by the respondents. Aggrieved by the said quantum of compensation, the appellants had preferred the instant appeal seeking enhancement.

7.The learned counsel for the appellants submitted that admittedly the deceased was an Engineering Student and had also produced mark sheet viz., Ex.P.14 to substantiate the fact that the deceased was a bright



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student. The Tribunal, however, had taken the notional monthly income of the deceased at Rs.10,000/- including future prospects for the accident which took place in the year 2020 which is meagre. The learned counsel relied upon the Judgment of this Court in ***Shriram General Insurance Co.Ltd. Vs. Mr.Gopalappa @ Gopal & Ors. in C.M.A. No. 4088 of 2019 dated 17.07.2023***, wherein this Court has fixed Rs.19,000/- as notional income for an engineering student. The learned counsel further submitted that the Tribunal had only awarded Rs.20,000/- each towards Loss of Love and Affection for the appellants and further no amount has been awarded under the head loss of estate. Hence, the learned counsel prayed for enhancement of compensation.

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

9.The learned counsel for the second respondent, per contra, submitted that the award of compensation by the Tribunal is just and reasonable. The learned counsel further submitted that fixing of notional income would depend on the facts and circumstances of each case. In the Judgment cited by the learned counsel for the appellants, deceased was



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also doing the business of buying and selling computers and thus, he had other source of income and the finding in that case cannot be the basis for fixing notional income in this case. Further, the Tribunal has awarded a compensation of Rs.25,000/- towards funeral expenses and the same has to be reduced. Hence, he prayed for dismissal of the appeal.

10.This Court on perusal of the award of the Tribunal and the material on record finds that notional income fixed by the Tribunal at Rs.10,000/- including future prospects is meagre. This Court had repeatedly held that in the case of Engineering Student, the notional income has to be higher. In C.M.A. No. 4088 of 2019, this Court fixed the notional income of Rs.19,000/- based on the fact that the deceased in that case was an Engineering graduate who had other source of income as well. However, in the facts and circumstances of this case and considering the fact that the deceased was a bright engineering student, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.15,000/- as the accident had taken place in the year 2020. Thus, the loss of income is calculated as follows; After adding 40% towards future prospects, the monthly income has to be Rs.21,000/- (Rs.15,000 + 40%). Since the deceased was aged 19 years, the multiplier



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applicable is 18. The deceased was a bachelor and hence 50% has to be deducted towards personal expenses. Thus, the loss of income would be Rs.21,000 X 12 X 18 – 50% = Rs.22,68,000/-. Further, the compensation under the head loss of love and affection is meagre and the same is enhanced to Rs.80,000/- (Rs.40,000/- each). Since no amount has been awarded towards loss of estate, Rs.15,000/- is awarded under the said head and Rs.25,000/- awarded towards funeral expenses is excessive and the same is reduced to Rs.15,000/-. 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	22,68,000	Enhanced
2.	Loss of Estate	----	15,000	Granted
3.	Loss of Love and Affection	40,000	80,000	Enhanced
4.	Funeral Expenses	25,000	15,000	Reduced
	Total	11,45,000	23,78,000	Enhanced by Rs.12,33,000/-

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



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Rs.11,45,000/- is hereby enhanced to Rs.23,78,000/- 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 directed to deposit the enhanced 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 their respective shares along with proportionate interest and costs, less the amount if any, already withdrawn as per the apportionment made by the Tribunal. The appellants are directed to pay the necessary Court Fee if any on the enhanced award amount. No costs.

20.07.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Special District Judge,
Motor Accident Claims Tribunal,
Salem.



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SUNDER MOHAN, J

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