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C.M.A.No.2258 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.2258 of 2023

1.Ravichandran
2.Bhuvaneswari

... Appellants

Versus

1.Karthikeyan

2.The Manager,
United India Insurance Co. Ltd.,
T.B.Hub Divisional Office,
No.4, Promenade Road,
First Floor, Trichy – 620 001.

... Respondents

(The 1st respondent remained *ex-parte* before the Tribunal).

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 22.02.2021 passed in M.C.O.P.No.315 of 2019, on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

For Appellants : Mr.M.Lokesh

For R2 : Mr.J.Chandran

JUDGMENT

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



C.M.A.No.2258 of 2023

2.The claimants/appellants had filed the claim petition stating that on 16.03.2019 at about 5.30 p.m., while the deceased was crossing the public road, the car belonging to the 1st respondent and insured with the 2nd respondent came in a rash and negligent manner, dashed against the deceased; that as a result of which, the deceased sustained fatal injuries and thus, the appellants are entitled for compensation.

3.The 1st respondent-owner of the offending vehicle remained *ex-parte* before the Tribunal.

4.The 2nd respondent filed a counter stating that the accident took place due to the negligence of the deceased; that in any case, the compensation claimed was excessive and thus, prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellant examined P.W.1 and marked Exs.P1 to P8 on their side. The 2nd respondent neither examined any witness nor marked any document.



C.M.A.No.2258 of 2023

6.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 car insured with the 2nd respondent and directed the 2nd respondent to pay the compensation of Rs.2,30,000/- to the appellants.

7.The learned counsel for the appellants submitted that though the appellants had established that the deceased was working as agriculturist and was also a milk vendor, the Tribunal had fixed a meagre notional income of Rs.5000/- per month, which required enhancement; that the Tribunal had not awarded any amount under the head loss of love and affection to the appellants, who are the children of the deceased and hence, prayed for enhancement of compensation.

8.Since the 1st respondent remained *ex-parte* before the Tribunal, the learned counsel for the appellant requested this Court to dispense with notice to the 1st respondent and he had also made an endorsement to that effect. Hence, notice to the 1st respondent is dispensed with.



C.M.A.No.2258 of 2023

9.The learned counsel for the 2nd respondent per contra submitted that the appellants are married children and hence, they are not dependants of the deceased; that the Tribunal ought to have deducted 50% towards personal expenses as the appellants were not fully dependant of the deceased. In such circumstances, the award of the Tribunal fixing a sum of Rs.5000/- per month as notional income is just and reasonable and no interference is called for.

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

11.On perusal of the records, it is seen that the deceased was aged 73 years at the time of accident. The appellants, though were married children of the deceased, it cannot be said that they were not dependant of the deceased. However, this Court is of the view that the appellants were not fully dependant on the deceased. Considering the said fact, age of the deceased, his avocation as milk vendor and year of accident, it would be just and reasonable to fix the notional income at Rs.10,000/-. Since the appellants were not fully dependant on the deceased, this Court is of the view that the deceased would have spent substantial amount



C.M.A.No.2258 of 2023

towards personal expenses and hence, 50% has to be deducted towards personal expenses while computing compensation under the head loss of income. Therefore, the compensation under the head loss of income has to be as follows:

$$\text{Rs.10,000/-} \times 12 \times 5 \times \frac{1}{2} = \text{Rs.3,00,000/-}.$$

The appellants are entitled to Rs.40,000/- each under the head loss of love and affection and Rs.10,000/- towards transportation expenses. Hence, the same are granted. The award of the Tribunal under other heads is 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	2,00,000	3,00,000	Enhanced
2.	Loss of Love and Affection	-	80,000	Granted
3.	Transportation	-	10,000	Granted
4.	Loss of Estate	15,000	15,000	Confirmed
5.	Funeral Expenses	15,000	15,000	Confirmed
	Total	2,30,000	4,20,000	Enhanced by Rs.1,90,000/-

12.With the above modification, this Civil Miscellaneous Appeal



C.M.A.No.2258 of 2023

is partly allowed and the compensation awarded by the Tribunal at Rs.2,30,000/- is hereby enhanced to Rs.4,20,000/-, together with interest at the rate of 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 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 share of the award amount now determined by this Court, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The appellants are directed to pay the necessary Court fee, if any, on the enhanced award amount. No costs.

26.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:



C.M.A.No.2258 of 2023

1.The Principal District Court,
The Motor Vehicle Accident Tribunal,
Perambalur.

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

SUNDER MOHAN, J.

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WEB COPY



C.M.A.No.2258 of 2023

C.M.A.No.2258 of 2023

26.09.2023