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C.M.A.No.1448 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1448 of 2022

1.Saraswathi
2.Mariyappan
3.Sudhakar

...Appellants

Vs.

1.Dhanasekaran
2.Shriram General Insurance Company Limited,
1st Floor, Front Portion,
No.5, Sachin Plaza,
Reddiyur Block No.1,
Salem District.
(1st respondent remained exparte before the
Tribunal and hence, notice may be dispensed
with for 1st respondent)

...Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.01.2022 in M.C.O.P.No.2261 of 2019 on the file of the Motor Accident Claims Tribunal / Special District Judge, Salem.

For Appellants : Mr.M.Guruprasad

For Respondents : Mrs.R.Sree Vidhya for R2



J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 03.01.2022 in M.C.O.P.No.2261 of 2019 on the file of the Motor Accident Claims Tribunal / Special District Judge, Salem.

2. The appellants/claimants filed the claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one Venkatesh, who died in the accident that took place on 08.09.2019. According to the appellants, on the date of accident i.e., on 08.09.2019 at about 13.30 hours, when the deceased was riding a two wheeler bearing registration No.TN 30 BS 1463 on the Omalur to Muthunaickenpatty road, a Tata Ace bearing registration No.TN 52 Z 7932 belonging to the first respondent, driven by its driver in a rash and negligent manner without observing traffic rules and regulations, dashed against the two wheeler of the deceased, as a result of which, the deceased sustained grievous injuries and died on 17.09.2019, inspite of the treatment. Hence, they were entitled to a claim of Rs.50,00,000/- as compensation.

3. The first respondent, who is the owner of the Tata Ace, remained ex-parte before the Tribunal.



4. The second respondent/Insurance Company filed a counter statement, denying the averments made in the claim petition and stated that the accident was not due to rash and negligent driving of the Tata Ace belonging to the first respondent and that in any case the deceased was also responsible for the accident. In any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellants examined three witnesses as P.W.1 to P.W.3 and marked 24 documents as Exs.P1 to P24. The second respondent/Insurance Company did not let in any oral or documentary evidence. The Aadhar Cards of P.W.2 and P.W.3 were marked as Exs.X1 and X2.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tata Ace belonging to the first respondent, fixed 80% negligence on the part of the driver of the Tata Ace and 20% negligence on the part of the deceased for not holding valid driving license and not wearing helmet and directed the 2nd respondent /Insurance Company being insurer of the Tata Ace to pay a sum of Rs.11,69,000/- i.e. 80% of the award amount as compensation to the appellants.



7. The learned counsel for the appellant submitted that the total compensation awarded by the Tribunal is meagre. The deceased was working as a manager in a coffee shop and was earning nearly Rs.15,000/- per month. The appellants examined one Chellamuthu/ who is the owner of the coffee bar as P.W.3 and also produced Ex.P23/Salary Certificate issued by him, in which, he has stated that the deceased was earning a sum of Rs.15,000/- per month. The learned counsel therefore submitted that the income fixed by the Tribunal at Rs.10,000/- per month has to be enhanced. The learned counsel further submitted that the award under the head loss of love and affection also needs to be enhanced and the Tribunal has not awarded any amount towards loss of estate and transportation.

8. Per contra, the learned counsel for the respondent submitted that the award of the Tribunal is just and reasonable. The deceased was only 19 years old at the time of accident. Ex.P23/ Salary Certificate of the deceased cannot be accepted as it was given by the owner of a private coffee shop. The brother, who is not a dependent of the deceased, has been awarded compensation under the head loss of love and affection, which has to be omitted. The compensation awarded under the head funeral expenses is also excessive and the same has to be reduced to Rs.15,000/- and also prayed for dismissal of the appeal.



9. The short question involved in the instant appeal is whether the quantum of compensation awarded by the Tribunal is just and reasonable.

10. The appellants have not challenged the finding with regard to fixing of contributory negligence on the deceased. Admittedly, the deceased did not have a valid driving license and did not wear helmet at the time of accident. Therefore, the contributory negligence fixed by the Tribunal at 20% on the deceased cannot be faulted. Hence, the finding of the Tribunal with regard to fixing of contributory negligence is hereby confirmed.

11. This Court finds that the Tribunal has taken a sum of Rs.10,000/- per month as notional income of the deceased by rejecting the evidence adduced on the side of the appellants. The appellants examined one Chellamuthu, who is the owner of the coffee shop, as P.W.3 and also produced Ex.P23/Salary Certificate of the deceased issued by him, showing that the income of the deceased was Rs.15,000/- per month. P.W.1/mother of the deceased has stated in her deposition that the deceased was working in the coffee shop. From the above evidence, it is clear that the deceased was employed in the coffee shop. Considering the age of the deceased, job pursued by him before death and the year of the accident, this Court is of the view that it would be just and



reasonable to fix the notional income as Rs.15,000/-. That apart, Ex.P23/Salary Certificate and the evidence of P.W.3 confirms that the income of the deceased was Rs.15,000/- per month. The Tribunal has not granted any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in **2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi)**, 40% has to be added towards future prospects. The deceased was a bachelor at the time of accident and therefore, the Tribunal deducted 50% towards personal expenses, which is proper. By applying multiplier '18', the compensation awarded by the Tribunal towards loss of income is modified as follows:

$$\text{Rs.15,000/-} + 6,000/- [\text{Rs.15,000/-} \times 40\%] \times 12 \times 18 \times \frac{1}{2} =$$

Rs.22,68,000/-.

12.The Tribunal has awarded a sum of Rs.60,000/- (Rs.20,000/- each) towards loss of love & affection to the appellants, which is not proper and therefore, it is set aside. The appellants 1 & 2, who are the parents of the deceased, are entitled to Rs.40,000/- each towards filial consortium. The third appellant is entitled to Rs.40,000/- towards loss of love and affection. The compensation awarded by the Tribunal under the head funeral expenses at Rs.25,000/- is excessive and the same is hereby reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate and hence, a sum



of Rs.15,000/- is hereby awarded towards loss of estate. The amount of compensation awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby 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 or reduced
1.	Loss of income	8,64,000 (after deducting 20% negligence on the part of the deceased)	22,68,000	Enhanced
2.	Loss of love and affection	60,000	-	Set aside
3.	Loss of love and affection to 3 rd appellant	-	40,000	Granted
4.	Medical bills	2,20,000	2,20,000	Confirmed
5.	Funeral expenses	25,000	15,000	Reduced
6.	Loss of estate	-	15,000	Granted
7.	Loss of filial consortium to the appellants 1 & 2	-	80,000	Granted
	Total	11,69,000	26,38,000	
	80% negligence fixed on the Insurance Company		21,10,400	Enhanced by Rs.9,41,400/-



13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,69,000/- is hereby enhanced to Rs.21,10,400/- (after deducting 20% towards contributory negligence) together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants 1 and 2, who are the parents of the deceased are entitled to a sum of Rs.9,50,000/- each and the 3rd appellant being brother of the deceased is entitled to a sum of Rs.2,10,400/-. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court i.e., Rs.21,10,400/- along with interest and costs (excluding the default period if any), less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants 1 to 3 are permitted to withdraw their respective share of the award amount now determined by this Court, along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

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Index: Yes/No
Internet: Yes/No
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To

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

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



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SUNDER MOHAN,J.

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