



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No.1636 of 2023

1.Sutha

2.Minor Charmika

3.Minor Deepak

Minors are represented by their mother,
guardian, next friend 1st appellant Sutha.

... Appellant

Vs.

1.Pujitha Roadways,

2. ICICI Lombard General Insurance Company Ltd.,
Branch Office, Swarnambigai Plaza,
1st Floor, Omalur Main Road, Salem.

Govindan (Died)

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.07.2022 in MCOP.No.401 of 2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.



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For Appellants : Mr.P.Jagadeesan
For Respondents : Mr.R.V.Sivaraj for R2
for Mr.J.Michael Visvasam
: No appearance for R1

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants challenging the quantum of compensation awarded by the Tribunal in MCOP.No.401 of 2020, dated 05.07.2022, on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

2. The appellants are the claimants in MCOP.No.401 of 2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. They filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of Krishnamoorthi in the accident that took place on 03.08.2019.

3. According to the appellants, on 03.08.2019 at about 09.45 p.m. while the deceased was proceeding in Chennai – Salem main road in his two wheeler, on the extreme left side of the road and was nearing Iyengar Bakery near Rama Hotel Thennangdipalayam, the driver of the lorry



belonging to the first respondent bearing Registration No.TN-19-AH-3166 drove the same in a rash and negligent manner without observing the Traffic Rules and dashed against the two wheeler of the deceased. Due to the said impact, the deceased sustained grievous injuries and died on the way to hospital. Therefore, the appellants filed the claim petition claiming a sum of Rs.50,00,000/- as compensation.

4. The first respondent, the owner of the offensive vehicle, remained *ex-parte* before the Tribunal.

5. The second respondent/Insurance Company filed counter statement denying all the averments made in the claim petition and stated that the accident did not happen due to the rash and negligent driving by the driver of the lorry bearing registration No.TN-19-AH-3166 and in any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellants examined P.W.1 and marked seventeen documents as Exs.P1 to P17. On the side of the second



respondent/Insurance Company no witness was examined and one document was marked as Ex.R1.

7. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to the rash and negligent the act of driver of the offending vehicle and directed the second respondent being the insurer of the offending vehicle to pay a sum of Rs.12,05,000/- as compensation to the appellants. Aggrieved over the said award, the appellants have preferred the instant appeal.

8. The learned counsel for the appellant submitted that the award of compensation is low and the Tribunal has fixed a meagre income of Rs.10,000/- though the appellants had established that the deceased was running a fruit stall and had obtained license from the Corporation, Ex.P.12. The learned counsel further submitted that the award of compensation under the other heads are also meagre and hence, prayed for enhancement of the compensation awarded by the Tribunal.

9. Learned counsel for the appellants submitted that the first respondent remained *ex-parte* before the Tribunal and therefore, requested this Court to dispense with the notice to the first respondent and had also made an



endorsement to that effect in the Court bundle. Hence, notice to the first respondent is dispensed with.

10. Per contra, the learned counsel for the second respondent/Insurance Company submitted that the award of the Tribunal is just and reasonable and therefore, does not call for any interference and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent/Insurance Company and perused all the materials available on record before this Court.

12. The only question involved in this case is whether the compensation awarded by the Tribunal is just and reasonable.

13. Admittedly, no income proof was produced on the side of the appellants. However, the appellants had produced Ex.P.12, tax receipt issued by the Salem Municipality for running the fruit shop. Considering his avocation, the year of accident and the age of the deceased, this Court is of



the view that it would be just and reasonable to fix monthly notional income as Rs.16,000/-. The deceased was aged 42 years. The appellants are entitled to 25% enhancement towards future prospects. Thus the award under the head “Loss of income” has to Rs.16,000 + Rs.4,000/- (25% future prospects) = Rs.20,000/- x 12 x 14 x $\frac{3}{4}$ = Rs.25,20,000/-. The first respondent, wife of the deceased is entitled to Rs.40,000/- under the head “Loss of consortium” and the same is confirmed. However, Second and third appellants being the children of the deceased are each entitled to a sum of Rs.40,000/- under the head “Loss of love and affection”. The third respondent, being the father of the deceased who is no more was also entitled to a sum of Rs.40,000/- under the head “Loss of love and affection”. Thus the award of compensation under the head “Loss of love and affection” is enhanced to Rs.1,20,000/-

14. 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	12,60,000	25,20,000	Enhanced
2.	Loss of	40,000	40,000	confirmed



	consortium to the first appellant			
3.	Loss of love and affection	80,000	1,20,000	Enhanced
4.	Funeral Expenses	25,000	15,000	Reduced
	Total	Rs.14,05,000/-	Rs.26,95,000/-	Enhanced by Rs.12,90,000/-

15. It is seen from the award of the Tribunal that after determining the compensation amount, the share of the third respondent/father was fixed as Rs.2,00,000/- and the same was deducted from the compensation payable to the appellants herein. The approach of the Tribunal is erroneous and the compensation determined has to be paid to the appellants.

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,05,000/- is hereby enhanced to Rs.26,95,000/- 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 appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. The first appellant/ wife of the deceased is entitled to Rs.16,95,000/- from the award amount now determined by this Court. The appellants 2 and 3, who are the daughter and son of the deceased



are entitled to a sum of Rs.10,00,000/- to be shared equally by them. The second respondent/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the first appellant permitted to withdraw her share of the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The shares of the minors/ second and third appellants is directed to be deposited in any one of the Nationalized Bank, till they attain majority. The 1st claimant being the mother of the minors/ second and third appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

25.08.2023

Index: Yes/No
Internet: Yes/No
Speaking order: Yes/ No
gba

To

1.The Additional District Judge, FTC No.III,
Motor Accident Claims Tribunal,
Tiruvallur.



C.M.A.No.1636 of 20



2.The Section Officer

VR Section

High Court of Madras, Chennai – 600 104.

SUNDER MOHAN,J.

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