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C.M.A.No.1316



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated: 09.06.2023**

**Coram:**

**THE HONOURABLE MRS.JUSTICE N.MALA**

**C.M.A.No.1316 of 2022**

1.Renu

2.Rohini

... Appellants

Vs.

1.M/s.A.M. Farook & Sons

No.1, Jones street

Mannady, Chennai-600 001.

(Since the 1<sup>st</sup> respondent remained exparte  
before the Tribunal, hence, his presence  
may be dispensed with)

2. Bajaj Allianz General Insurance Company Limited

No.497/498, 5<sup>th</sup> floor

Isana Kattima Building

P.H.Road, Arumbakkam

Chennai-600 106.

... Respondents

**Prayer:** Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying against the judgment and decree dated 08.02.2018 made in M.C.O.P.No.1661 of 2014 on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.1 to deal with MCOP cases, (Small Causes Court), Chennai.



For Appellants : Mr.V.Velu

For R2 : Mr.T.K.Premkumar

### **JUDGMENT**

The appeal is filed by the appellants/claimants challenging the judgment and decree dated 08.02.2018 made in M.C.O.P.No.1661 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1 to deal with MCOP cases, (Small Causes Court), Chennai.

2. The brief facts leading to the appeal are that, on 29.01.2014, while the deceased Babu was riding his two wheeler bearing Registration No.TN-22-AE-1704 at about 20.00 hours on TH road, near Suriya Hotel, the driver of the Eicher van bearing Registration No.TN-04-AA-2525 belonging to the 1<sup>st</sup> respondent drove the same in a rash and negligent manner, dashed against the two wheeler, causing him fatal injuries. According to the appellants/claimants, the deceased Babu was aged 21 years at the time of accident and as a self-employed mechanic, was earning a sum of Rs.15,000/- per month. The mother and unmarried sister of the deceased have therefore, filed claim petition seeking compensation of Rs.20,00,000/-.

3. Before the Claims Tribunal, the 1<sup>st</sup> respondent, owner of the van remained exparte and the claim petition was contested by the 2<sup>nd</sup> respondent/Insurance



Company.

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4. The 2<sup>nd</sup> respondent/Insurance Company filed a detailed counter denying all the averments made in the claim petition including negligence, liability and quantum of compensation.

5. Before the claims Tribunal, the 1<sup>st</sup> appellant/1<sup>st</sup> claimant, mother of the deceased examined herself as P.W.1, the eye-witness was examined as P.W.2, co-employee of the deceased was examined as P.W.3 and Exs.P1 to P9 were marked. On the side of the 2<sup>nd</sup> respondent/Insurance Company, Assistant from RTO, Chennai, was examined as R.W.1 and Legal Executive of the Insurance Company was examined as R.W.2 and Exs.R1 to R6 were marked.

6. The claims Tribunal, on an assessment of the entire evidence on record, awarded a sum of Rs.14,44,600/- as compensation along with 7.5% interest. Not satisfied with the quantum of compensation awarded by the claims Tribunal, the appellants/claimants have filed the above appeal for enhancement of compensation.

7. Learned counsel appearing for the appellants/claimants submitted that assessment of income at Rs.8,000/- by the claims Tribunal was erroneous and the same is very meagre considering that the deceased Babu was self-employed and was earning a sum of Rs.15,000/- per month at the time of accident.



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8. Learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company on the other hand submitted that the award of the Tribunal is just, fair and reasonable. Learned counsel further submitted that the Tribunal erred in awarding a sum of Rs.2,00,000/- towards loss of love & affection and the award did not call for any interference on the other heads.

9. I have heard both the learned counsel and perused the materials placed on record.

10. It is seen that the Tribunal directed the 2<sup>nd</sup> respondent/Insurance Company to pay first and later recover the amount from the owner of the vehicle, as there was violation of policy. I find no infirmity in the finding of the Tribunal and hence, the direction for pay and recovery is confirmed.

11. Considering that the accident took place in the year 2014, the cost escalation and the nature of avocation of the deceased Babu, the notional income can be fixed at Rs.11,000/- per month. Learned counsel for the 2<sup>nd</sup> respondent/Insurance Company is right in submitting that the appellants/claimants shall be entitled to Rs.40,000/- each towards loss of love and affection instead of Rs.2,00,000/- awarded by the Tribunal.



12. In view of the above discussion, the award of the Tribunal is modified as follows:

| <i>S.No.</i>       | <i>Various Heads</i>                                      | <i>Award of the Tribunal</i>      | <i>Award of this Court</i>                                                      |
|--------------------|-----------------------------------------------------------|-----------------------------------|---------------------------------------------------------------------------------|
| 1.                 | Income                                                    | Rs.8,000/- per month              | Rs.11,000/- per month                                                           |
| 2.                 | 40% of (1) added for future prospects                     | Rs.8,000+ Rs.3200=<br>Rs.11,200/- | 40% of (1) added for future prospects :<br>Rs.11,000 + Rs.4,400=<br>Rs.15,400/- |
| 3.                 | 50% of (ii) deducted as personal expenses of the deceased | Rs.11,200 – 5600 =<br>Rs.5,600/-  | Rs.15,400 – 7,700 =<br>Rs.7,700/-                                               |
| 4.                 | Compensation after multiplier of 18 is applied            | Rs.5,600x12x18=<br>Rs.12,09,600/- | Rs.7,700x12x18=<br>Rs.16,63,200/-                                               |
| 5.                 | Loss of Income                                            | Rs.12,09,600/-                    | Rs.16,63,200/-                                                                  |
| 6.                 | Loss of love and affection to appellants                  | Rs.2,00,000/-                     | Rs.80,000/-<br>(Rs.40,000x2=80,000/-)                                           |
| 7.                 | Loss of estate                                            | Rs.15,000/-                       | Rs.15,000/-                                                                     |
| 8.                 | Transportation charges                                    | Rs.5,000/-                        | Rs.5,000/-                                                                      |
| 9.                 | Funeral expenses                                          | Rs.15,000/-                       | Rs.15,000/-                                                                     |
| Total Compensation |                                                           | Rs.14,44,600/-                    | Rs.17,78,200/-<br><b>enhanced amount</b><br><b>Rs.3,33,600/-</b>                |

The claimants are entitled for enhanced compensation of Rs.3,33,600/-.

13. Learned counsel for the 2<sup>nd</sup> respondent/Insurance Company submitted that the entire amount awarded by the Tribunal along with accrued interest and costs was deposited.



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14. Learned counsel for the appellants/claimants submitted that the appellants/claimants had withdrawn the entire award amount deposited in the Tribunal. Therefore, there shall be a direction to the 2<sup>nd</sup> respondent/Insurance Company to deposit the enhanced compensation of Rs.3,33,600/- along with 7.5% interest within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/claimants shall be entitled to withdraw the same as per the ratio of apportionment made by the Tribunal, along with proportionate interest and costs, by making proper application before the claims Tribunal. The direction for pay and recovery ordered by the Tribunal is confirmed.

15. The appeal is accordingly partly allowed. There shall be no order as to costs.

**09.06.2023**

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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C.M.A.No.131



**To**  
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1.The learned Special Subordinate Judge, Small Causes Court,  
Motor Accidents Claims Tribunal, Chennai.

2.The Section Officer,  
V.R.Section,  
High Court, Madras.



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C.M.A.No.131



**N.MALA.J.,**

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