



WEB COPY



CMA No. 1071 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1071 of 2023

- 1.Manjula
- 2.Ajith kumar
- 3.Minor Gowarthan
- 4.Minor Nanthakumar
- 5.Gokila

(Minors 3 and 4 rep. by their guardian, next friend, mother manjula - 1st appellant)

... Appellants

Versus

The Managing Director,
TNSTC Ltd., Villupuram Division,
No.3/137, Salamedu, Valuthareddy and Post,
Villupuram TK, Pin – 603305.

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 01.11.2022 made in M.C.O.P. No. 1257 of 2017 on the file of the Motor Accident Claims Tribunal / (Special Sub Judge No.1 to deal with MCOP cases, Small causes Court, Chennai).

For Appellants : Ms. Ramya V. Rao



CMA No. 1071 / 2023

For Respondent : Mr. S. Santhosakumar.

J U D G M E N T

The appeal has been filed by the appellants challenging the award passed by the Tribunal in M.C.O.P. No. 1257 of 2017 dated 01.11.2022.

2.The appellants had filed a claim petition before the Tribunal stating that on 04.02.2017 at about 19.00 hrs, the deceased was riding his motor cycle bearing Registration No. PY-01-AG-7662 along with his wife / first appellant as pillion rider in ECR road, Katthankadai Junction and when it turned to the right side, a TNSTC bus bearing Registration No. TN 32 N 4162 which was coming from Chennai towards Pondicherry, driven by its driver in a rash and negligent manner, hit the motor cycle as a result of which the deceased sustained severe injuries and died on the spot and the first appellant also sustained multiple injuries all over her body.

3.The respondent filed a counter denying all the averments made in the claim petition stating that the accident occurred due to the negligence of the deceased; that the deceased proceeded from the service road to main road in the national highways without noticing the ongoing vehicles



CMA No. 1071 / 2023

and thus caused the accident; that the deceased did not wear helmet and did not possess valid driving license at the time of the accident; that the petition is bad for non-joinder of the necessary parties; and that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

4.The appellants examined two witnesses as PW1 & PW2 on their side and marked Ex.P.1 to Ex.P.20. On the side of the respondent, RW1 was examined and no exhibit was marked.

5.The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the negligence of the driver of the TNSTC bus; that since the bus has not been insured with any insurance company and the respondent being the owner of the bus is liable to pay compensation and hence, directed the respondent to pay a sum of Rs.18,83,800/- as compensation to the appellants. Aggrieved by the said award, the appellants have preferred the instant appeal.

6.The learned counsel for the appellant submitted that the award of the Tribunal is meagre; that the Tribunal had fixed the notional income



CMA No. 1071 / 2023

of the deceased at Rs.10,500 per month; that considering the avocation of the deceased and the year of the accident, the Tribunal ought to have fixed a higher notional income as the deceased was a boat driver cum fisher man and prayed for enhancement of compensation.

7.The learned counsel for the respondent, per contra, submitted that except for stating that the deceased was working as a boat rider and fisherman, no proof has been produced to prove the income earned by him. Therefore, the Tribunal was justified in awarding the compensation by fixing the notional income at Rs.10,500/- per month. Hence, he prayed for dismissal of the appeal.

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

9. Though the appellants had established that the deceased was a fisherman and was also a boat rider, from the materials on record, it is seen that the Tribunal had fixed the notional income at Rs.10,500/-. The appellants had marked Ex.P.7 and Ex.P.8, copy of the fisherman identity card and copy of the fisherman membership card separately. Thus, the

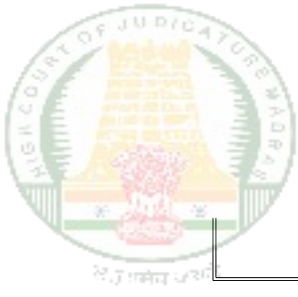


CMA No. 1071 / 2023

avocation of the deceased has been established by the appellants.

However, they have not produced any evidence to prove the income of the deceased. Considering the avocation of the deceased, the age and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.15,000/- per month. The deceased was aged 43 years at the time of the accident. Hence, the appellants are entitled to 25% enhancement towards future prospects and the multiplier applicable is 14. Since there are four dependents, $\frac{1}{4}$ has to be deducted towards personal expenses. Thus, the loss of income would be Rs.15,000 + Rs.3,750 (25% of Rs.15,000) = Rs.18,750/- X 12 X 14 X $\frac{3}{4}$ = Rs.23,62,500/-. The award under the other heads are just and reasonable and the same are confirmed. 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 dependancy	16,53,750	23,62,500	Enhanced
2.	Funeral Expenses	15,000	15,000	Confirmed
3.	Loss of consortium	2,00,000	2,00,000	Confirmed
4.	Loss of estate	15,000	15,000	Confirmed
	Total	18,83,750 rounded off	25,92,500	Enhanced by Rs.7,08,700/-



CMA No. 1071 / 2023

to 18,83,800

WEB COPY

10. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.18,83,800/- is hereby enhanced to Rs.25,92,500/- 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 respondent 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 eight (8) weeks from the date of a receipt of copy of this Judgment. On such deposit, the first appellant is permitted to withdraw a sum of Rs.12,00,000/-, the second appellant is permitted to withdraw a sum of Rs.4,00,000/- and the fifth appellant is permitted to withdraw a sum of Rs.1,92,500/- along with proportionate interest and costs, less the amount if any, already withdrawn. The shares of the minor appellants 3 and 4 of Rs.4,00,000/- each are directed to be deposited in the interest bearing Fixed Deposit in any of the nationalized bank till they attain majority and the first appellant is permitted to withdraw the accrued interest once in three months. The appellants are directed to pay the necessary court fee if any on the enhanced award amount. No costs.



CMA No. 1071 / 2023

18.08.2023

WEB COPY

ay

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accident Claims Tribunal,
Special Sub Judge No.1 to deal with MCOP cases,
Small causes Court, Chennai.
2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.



WEB COPY



CMA No. 1071 / 2023

SUNDER MOHAN, J

ay

C.M.A. No. 1071 of 2023

Dated: 18.08.2023