



WEB COPY



C.M.A.No.1635 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1635 of 2023

1.G.Selvi

2.D.Abhishake

3.D.Aarthi

... Appellants

Versus

1.R.Tamilvanan

2.The IFFCO-TOKIO General Insurance Company Limited,
No.28, Old No.195, North Usman Road,
T.Nagar, Chennai 17.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 02.08.2019 made in M.C.O.P.No.1348 of 2017, on the file of the Motor Accident Claims Tribunal, II Special Sub-Court, Small Causes Court, Chennai.

For Appellants

: Mr.A.Baskaran

For R1

: Mr.L.Rajendran

For R2

: Mr.M.Jayaraj

JUDGMENT

This appeal has been filed by the claimants challenging the compensation awarded by the Tribunal in M.C.O.P.No.1348 of 2017, dated 02.08.2019.



C.M.A.No.1635 of 2023

2.The appellants have filed the claim petition stating that on 19.10.2016, while the deceased was crossing the road, he was hit by the motorcycle bearing Regn No.TN 05 BC 7320 and sustained fatal injuries.

3.The respondents 1 and 2 resisted the claim petition and submitted that the accident did not take place due to the negligence of the rider of the motorcycle and the deceased himself is a tort feisor; that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

4.Before the Tribunal, the appellants/claimants examined two witnesses and marked Ex.P.1 to Ex.P.17 on their side. The 1st respondent examined himself as R.W.1 and had not marked any document. On behalf of the 2nd respondent/Insurance Company, no witness was examined and no document was marked.

5.The Tribunal after considering the oral and documentary evidence had held that the accident occurred due to rash and negligent riding by the rider of the motorcycle and being the insurer of the 1st respondent's motorcycle, directed the 2nd respondent/Insurance Company



C.M.A.No.1635 of 2023

to pay a sum of Rs.28,43,800/- as compensation to the appellants/claimants.

6. Aggrieved over the award passed by the Tribunal, the appellants/claimants filed the present appeal seeking for enhancement of compensation.

7. The learned counsel for the appellants submitted that the deceased was a Central Government employee and aged about 57 years at the time of the accident; that the Tribunal had erroneously applied split multiplier which is contrary to the settled position of law and relied upon the judgment of this Court in the case of *Aswath Narayanan and ors. vs. M.Y.Samim Mohammed* made in *C.M.A.No.3416 of 2021* dated **28.10.2022** and prayed for enhancement of compensation by applying single multiplier.

8. The learned counsel for the 2nd respondent per contra submitted that the award of the Tribunal is just and reasonable and no interference is called for and prayed for dismissal of the appeal.



C.M.A.No.1635 of 2023

9.The learned counsel for the 1st respondent adopted the submissions made by the learned counsel for the 2nd respondent.

10.The only question involved in the instant appeal is whether the award of the Tribunal is just and reasonable?

11.On perusal of the records, it is seen that the Tribunal in the instant case had adopted split multiplier, which is contrary to the settled position of law reiterated by this Court in several cases, including in *Aswath Narayanan and ors. vs. M.Y.Samim Mohammed* made in *C.M.A.No.3416 of 2021* dated *28.10.2022*. There is no dispute with regard to the other aspects of the award. The appellants had marked Ex.P10, to prove the income of the deceased. The deceased was earning a sum of Rs.66,752/- per month at the time of his death. He is entitled to 15% enhancement towards future prospects as per the decision of the Hon'ble Supreme Court in the case of *Sarla Verma & others vs. Delhi Transport Corporation & another* reported in *2009 (2) TNMAC 1 SC*. The Tribunal had arrived at annual income as Rs.8,11,944/- after taking into consideration future prospects and deducting income tax. The said finding of the Tribunal with regard to the income is justified. Since the



C.M.A.No.1635 of 2023

deceased was aged 57 years at the time of accident, the multiplier applicable is 9 and after deducting 1/3rd towards the personal expenses, the compensation towards loss of income would be as follows:

$$\text{Rs.}8,11,944 \times 9 \times 2/3 = \text{Rs.}48,71,664/-.$$

The amount awarded by the Tribunal towards loss of love and affection at Rs.1,00,000/- is reduced to Rs.80,000/- and the amount awarded by the Tribunal towards parental consortium is set aside. 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 Dependency	25,93,710	48,71,664	Enhanced
2.	Loss of Consortium	40,000	40,000	Confirmed
3.	Loss of Estate	15,000	15,000	Confirmed
4.	Funeral Expenses	15,000	15,000	Confirmed
5.	Loss of love and affection for appellants 2 & 3	1,00,000	80,000	Reduced
6.	Parental consortium	80,000	-	Set Aside
	Total	28,43,710 rounded off to 28,43,800	50,21,664 rounded off to 50,21,700	Enhanced by Rs.21,77,900/-



C.M.A.No.1635 of 2023

WEB COPY

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.28,43,800/- is hereby enhanced to Rs.50,21,700/-, 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 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 four (4) 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 already withdrawn, if any. The appellants are directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

08.09.2023

rst/dpa

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



C.M.A.No.1635 of 2023

To:

WEB COPY

- 1.The Motor Vehicle Accident Tribunal,
II Special Sub-Court, Small Causes Court,
Chennai.
- 2.The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



C.M.A.No.1635 of 2023

SUNDER MOHAN, J.

rst/dpa

C.M.A.No.1635 of 2023

08.09.2023