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CMA No. 1755 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1755 of 2023

Adhikesavan (Died)

1. Neelavathy

2. Durgadevi

3. Subashini

... Appellants

Versus

1. Srinivasan

2. The Manager,

National Insurance Company Limited,
Old No. 144, New No. 46, 3rd Floor,
Moore Street, Regina Mansion,
Chennai – 600 106.

(R1 remained ex parte before the Tribunal.

Hence, notice may be dispensed with for

R1 in this appeal)

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 09.03.2020 made in M.C.O.P. No. 05 of 2017 on the file of MACT/Additional District Court (FTC) at Kanchipuram.

For Appellants : Mr. MA.P.Thangavel for Mr. M.Lokesh

For Respondents : R1 – Exparte



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Mrs. R.Sreevidhya (for R2)

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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. 5 of 2017 dated 09.03.2020.

2.The appellants had filed a claim petition before the Tribunal stating that on 13.11.2016 at about 4 p.m., Mohankumar was riding in the two wheeler bearing Registration No. TN 21 AQ 2098 along with pillion rider near Iyyangarkulam Flower Mill, a two wheeler bearing Registration No. TN 25 AY 4559 which came from Vandavasi to Kancheepuram direction driven in a rash and negligent manner, dashed against the two wheeler in which deceased travelled as a result of which, the deceased sustained severe injuries and died. Hence, the appellants have filed claim petition seeking compensation.

3.The first respondent remained ex-parte before the Tribunal.

4.The second respondent filed a counter denying all the averments made in the claim petition stating that the deceased was riding the same without proper driving license and did not wear helmet at the time of the



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accident; that the accident occurred only due to the rash and negligent driving of the deceased; and that as per the MVI Report, there was no damage to the vehicle of the deceased; that the driver's name of the first respondent's vehicle, who is primarily liable, is not mentioned in the claim petition; that the vehicle of the first respondent is not insured with the second respondent and that in any case, the compensation claimed by the appellants is excessive and prayed for dismissal of the petition.

5.The appellants examined two witnesses on their side as PW.1 and PW.2 and marked Ex.P.1 to Ex.P.9. The second respondent neither examined any witness nor marked any documents.

6.The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the rash and negligent riding by the rider of the two wheeler bearing Registration No. TN 25 AY 4559 and awarded a compensation of Rs. 8,26,000/- to the appellants to be paid by the second respondent. Aggrieved by the said quantum of compensation, the appellants had preferred the instant appeal.

7.The learned counsel for the appellants submitted that the



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quantum of compensation awarded by the Tribunal is meagre inasmuch as the Tribunal fixed a very low notional income of the deceased at Rs. 5,000/- per month though the appellants had established that the deceased was an engineering student. The learned counsel further submitted that for the accident which took place in the year 2015 and 2016, the Division Bench of this Court had fixed Rs. 20,000/- as notional monthly income for an engineering student and relied upon the Judgment of the Honourable Supreme Court in ***Basanti Devi and another Vs. Divisional Manager, New India Assurance Co.Ltd., and others*** reported in ***2022 (1) TN MAC 148 (SC)***; Judgment of the Honourable Supreme Court in ***Managing Director, Tamil Nadu State Transport Corporation Limited Vs. Neela and other*** reported in ***2019 (2) TN MAC 153 (DB)***; and Judgment of this Court in ***The Managing Director, Tamil Nadu State Transport Corporation Limited Vs. K. Jayalaxmi and other*** in C.M.A. No. 2114 & 1134 of 2022 dated 30.06.2023 in support of his submissions. Therefore, the learned counsel prayed for enhancement of compensation.

8.The first respondent remained ex parte before the Tribunal. The



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learned counsel for the appellants has made an endorsement to dispense with the notice to the first respondent. Accordingly, notice to the first respondent is dispensed with.

9.The learned counsel for the second respondent, per contra, submitted that the Tribunal had awarded just and reasonable compensation and there is no reason to interfere with the same and prayed for dismissal of the appeal.

10.The question that arises for consideration in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

11.Admittedly, the deceased was an engineering student as could be seen from Ex.P.7 and Ex.P.9 Bonafide Certificate and Identity Card of the deceased issued by the College Authorities. Therefore, this Court finds that the notional income fixed by the Tribunal is meagre. Though the learned counsel for the appellants submitted that in other cases, the Division Bench of this Court has fixed the notional monthly income as Rs. 20,000/- for the engineering student, this Court is of the view that the



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fixation of notional income depends on the facts and circumstances of this case. Considering the fact that the deceased was an engineering student and he was doing part-time job, the year of the accident and his age, this Court is of the view that it would be just and reasonable to fix Rs. 17,000/- as notional income per month for the deceased. The deceased was aged 22 years at the time of accident and hence, the appellants are entitled to 40% enhancement towards future prospects and the multiplier applicable is 18. Since the deceased died as a bachelor, 50% has to be deducted towards personal expenses. Thus, the loss of income would be Rs. 17,000/- + Rs. 6,800/- (40% of Rs. 17,000/-) = Rs. 23,800/- x 12 x 18 x 1/2 = Rs. 25,70,400/-. Further, the loss of consortium of Rs. 40,000/- awarded by the Tribunal is incorrect and the same is set aside and the appellants are entitled to Rs. 40,000/- each under the head loss of love and affection, which comes to Rs. 1,20,000/-. The award under the other heads are just and the same are confirmed. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. Thus, the award of the Tribunal is modified as follows;



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	7,56,000	25,70,400	Enhanced
2.	Loss of Estate	15,000	15,000	Confirmed
3.	Funeral Expenses	15,000	15,000	Confirmed
4.	Loss of Consortium	40,000	---	Set aside
5.	Loss of Love and Affection	---	1,20,000	Granted
	Total	8,26,000	27,20,400	Enhanced by Rs. 18,94,400/-

12. With the above modification, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs. 8,26,000/- is hereby enhanced to Rs.27,20,400/- 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 second 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 six (6) weeks from the date of a receipt of copy of this Judgment, if not already deposited. On such deposit, the first appellant is permitted to withdraw Rs. 15,00,000/- and the second and third appellants are permitted to withdraw Rs. 6,10,200/- each along with proportionate interest and costs, less the amount if any, already



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withdrawn. The appellants are further directed to pay the requisite court fee, if any, on the enhanced award amount. No costs.

23.08.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

SUNDER MOHAN, J

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To

1.MACT/Additional District Court (FTC),
Kanchipuram.

2.The V.R. Section,
High Court of Madras,
Chennai.

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