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C.M.A.No.1680 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1680 of 2023

1.Shamshad
2.Rizwana
3.Rashith

... Appellants

Vs

1.National Switch Gears,
No.94-B/33, Sidco Industrial Estates,
Ambattur, Chennai – 98.

2.The Divisional Manager,
United India Insurance Company Limited,
3rd Floor, Door No.147/58C, Kamarajar Street,
Kancheepuram.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.11.2021 made in M.C.O.P.No.632 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District Court (FTC), Kanchipuram.

For Appellants	: Mr. M. Lokesh
For Respondents	: Mrs. R. Sree Vidhya, for R2 R1 – Ex parte



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J U D G M E N T

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This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 22.11.2021 made in M.C.O.P.No. 632 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District Court (FTC), Kanchipuram.

2. The appellants filed M.C.O.P. No.632 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District Court (FTC), Kanchipuram claiming a sum of Rs.25,00,000/- as compensation for the death of one Shaik Sanaulla, who died in the accident that took place on 26.06.2017.

3. According to the appellants, on 26.06.2017 at about 07.20 am, while the deceased Shaik Sanaulla along with his two sons viz., Bilal and Rasheed, were riding the motorcycle bearing Registration No.TN-25-AU-1047 towards Sunguvarchatram on a Bangalore to Chennai National Highway, the car bearing Registration No.TN-20-AU-3503 which was driven by the driver in a rash and negligent, came from behind and hit the



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motorcycle and caused the accident; that in the above said accident, the said Shaik Sanaulla and his two sons sustained grievous injuries; that immediately they were taken to Kancheepuram Government Hospital and admitted. However, Shaik Sanaulla died on the same day and his elder son Bilal died on 06.07.2017. Hence, the appellants filed claim petition claiming compensation against the respondents.

4. The 1st respondent remained ex-parte before the Tribunal.

5. The second respondent filed counter statement denying all the averments made by the appellants in the claim petition. According to the second respondent, the driver of the first respondent did not possess any valid driving license and not insured the vehicle with them at the time of accident; that total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. The 1st appellant examined herself as PW.1 and Rasheed, eye-witness to the accident as PW.2. Ten documents were marked as Ex.P.1 to Ex.P.10. Neither documents were marked nor witnesses were examined on



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the side of the second respondent.

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7. The Tribunal after considering the evidence and documents filed on the side of the appellants, held that the accident occurred due to the rash and negligent driving by the driver of the first respondent; directed the second respondent to pay a sum of Rs.10,49,944/- as compensation to the appellants at the first instance and recover the same from the first respondent.

8. Aggrieved by the said award, the appellants have preferred the present appeal seeking enhancement of compensation.

9. The learned counsel for the appellant submitted that the quantum of compensation awarded by the Tribunal is meagre, in as much as the Tribunal fixed a very low notional income of Rs.7,000/- per month for the deceased, although, the appellants had established that he was doing business of trading in Mangoes and earning more than Rs.50,000/- per month. The learned counsel therefore, sought for enhancement of compensation.



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10. The learned counsel for the second respondent per contra submitted that no evidence has been let in by the appellants to either prove the avocation and income of the deceased; that in the absence of the same, the Tribunal was justified in fixing the notional income as Rs.7,000/- per month and hence, prayed for dismissal of the appeal.

11. The only question in the instant appeal is-

Whether the Tribunal was right in fixing the notional income of Rs.7,000/- per month?

12. The appellants had examined PW.1, the wife of the deceased to show that the deceased was doing the business of trading in Mangoes and was earning Rs.50,000/- per month. The appellants have not produced any documentary evidence to prove the income of the deceased. However, considering the age of the deceased, the number of dependants, his avocation and the year of accident, this Court is of the view that it would be just and reasonable to fix Rs.13,000/- per month as notional income of the deceased. The deceased was aged 45 years at the time of accident. The



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appellants are entitled to 25% enhancement towards future prospects. The multiplier applicable is '14'. The deceased was survived by his wife and two children. Hence, $1/3^{\text{rd}}$ has to be deducted towards his personal expenses. Thus, the compensation amount towards loss of income has to be:-

$$\text{Rs.}13,000+3,250(13,000 \times 25\%) - x12 \times 14 \times 2/3 = \text{Rs.}18,20,000/-$$

No amount was awarded towards loss of love and affection to the appellants 2 and 3, who are the children of the deceased, hence, a sum of Rs.40,000/- each to the appellants 2 and 3 is awarded towards loss of love and affection. The compensation awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.10,49,944/- to Rs.19,70,000/-, break-up as follows -

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	9,79,944/-	18,20,000/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of consortium	40,000/-	40,000/-	Confirmed



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4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Loss of love and affection	-	80,000/-	Awarded
	Total	10,49,944/-	19,70,000/-	Enhanced by Rs.9,20,056/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,49,944/- is hereby enhanced to Rs.19,70,000/- together with interest at 7.5% per annum from the date of petition till the date of deposit. The appellants are not entitled for any interest for the delay period on the amount of Rs.9,20,056/- enhanced by this Court as per the order of this Court dated 18.07.2023, made in C.M.P.No.11691 of 2023 in C.M.A.SR.No.68169 of 2023. The second 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 six (6) weeks from the date of a receipt of copy of this Judgment at the first instance and recover the same from the first respondent. On such deposit, the appellants 2 and 3 / children of the deceased are entitled to Rs.5 lakhs each and the 1st appellant / wife of the deceased is entitled to



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remaining amount. The appellants are directed to pay the necessary Court

Fee, if any, on the enhanced award amount. No costs.

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Index: Yes/No

Neutral Citation: Yes/No

AT

To

1.The Motor Accident Claims Tribunal,
Additional District Court (FTC), Kanchipuram.

2.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

AT

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