



C.M.A.No.1939 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1939 of 2023

1.K.Arumugam
2.A.Indira
3.A.Indhumathi

... Appellants

Versus

1.P.Venkatachalam

2.The Branch Manger,
National India Insurance Co. Ltd.,
No.165, Nethaji Road, Manjakuppam,
Cuddalore.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 17.08.2022 and made in M.C.O.P.No.224 of 2021 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Cuddalore.

For Appellants : Ms.Mira Aurobindo Cumar

For R2 : Mr.C.Paranthaman

JUDGMENT

The claimants have preferred the above appeal seeking enhancement of compensation.



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2.The appellants had filed the claim petition stating that on 21.01.2021, at about 19.00 hrs, while the deceased was riding TVS moped, the goods carrier insured with the 2nd respondent came in the opposite direction in a rash and negligent manner, dashed against the vehicle of the deceased; that as a result of which, the deceased sustained fatal injuries and hence, the appellants are entitled for compensation.

3.The 1st respondent-owner of the offending vehicle remained *ex-parte* before the Tribunal.

4.The 2nd respondent filed a counter stating that the driver of the goods carrier did not possess valid driving license; that the accident took place only due to the negligence of the deceased; that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellants examined P.W.1 and P.W.2 and marked Exs.P1 to P9. The 2nd respondent did not examine any witness, but marked Exs.R1 to R4.



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6.The Tribunal after taking into consideration the oral and documentary evidence held that the accident took place due to the negligence of the driver of the offending vehicle and found that since the deceased did not wear helmet at the time of accident, fixed 10% contributory negligence on the part of the deceased; that since the driver of the offending vehicle did not have valid driving license at the time of accident, directed the 2nd respondent to pay 90% of the compensation amount at the first instance and recover the same from the 1st respondent.

7.The learned counsel for the appellants submitted that the compensation awarded by the Tribunal is meagre as the Tribunal had fixed a meagre notional income of Rs.13,500/- per month though the appellants had established the fact that the deceased was a Nathaswaram Artist at a Temple and was earning more than Rs.25,000/- per month. The learned counsel, therefore prayed for enhancement of compensation.

8.Since the 1st respondent remained *ex-parte* before the Tribunal, the learned counsel for the appellant sought permission of this Court to dispense with notice to the 1st respondent and he had also made an



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endorsement to that effect. Hence, notice to the 1st respondent is dispensed with.

9.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 hence, prayed for dismissal of the appeal. The learned counsel further submitted that, in the event of this Court enhancing the compensation amount, the direction of the Tribunal to pay and recover the compensation may be confirmed.

10.On perusal of the records, it is seen that the appellant had examined P.W.1, the father of the deceased to show that the deceased was a Nathaswaram Artist. He had marked Ex.P9, photographs of the deceased performing Nathaswaram in a Temple. However, no document was filed to prove the income of the deceased. Therefore, the Tribunal had fixed the notional income at Rs.13,500/- per month. Considering the age, avocation of the deceased and year of accident, this Court is of the view that it would be just and reasonable to fix the notional income of the deceased at Rs.18,000/- per month. The deceased was aged 24 years at the time of accident. Hence, the appellants are entitled to 40%



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enhancement towards future prospects and the multiplier applicable is 18.

After deducting 50% towards personal expenses, the award under the head loss of income would be as follows:

$$\text{Rs.}25,200/- (\text{Rs.}18,000 + 40\%) \times 12 \times 18 \times \frac{1}{2} = \text{Rs.}27,21,600/-.$$

11.As regards contributory negligence, the Tribunal found that the deceased did not wear helmet at the time of accident and hence fixed 10% contributory negligence on the deceased. The learned counsel for the appellant is unable to point out any infirmity in the said finding and hence, 10% contributory negligence fixed on the deceased is confirmed. The award under other heads is just and reasonable and the same are confirmed. The award of the Tribunal in directing the 2nd respondent to pay compensation at the first instance and thereafter recover it from the 1st respondent is confirmed. Thus, the award 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	20,41,200	27,21,600	Enhanced
2.	Loss of Parental Consortium	88,000	88,000	Confirmed
3.	Funeral Expenses	16,500	16,500	Confirmed
4.	Loss of Estate	16,500	16,500	Confirmed
5.	Transportation Charges	10,000	10,000	Confirmed
	Total	21,72,200	28,52,600	Enhanced by Rs.6,12,340/-
	Less Contributory negligence @ 10%	2,17,220	2,85,260	
	Net compensation payable Rounded off	19,54,980 19,55,000	25,67,340	

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.19,55,000/- is hereby enhanced to Rs.25,67,340/- 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 six (6) weeks from the date of receipt of a copy of



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this Judgment at the first instance and recover the same from the 1st respondent-owner of the vehicle. On such deposit, the 3rd appellant, who is the sister of the deceased would be entitled to withdraw a sum of Rs.3,00,000/-, along with proportionate interest and costs and the remaining award amount shall be equally shared by the appellants 1 and 2. The appellants 1 and 2 are permitted to withdraw their respective share of award amount along with interest and costs, less the amount if any, already withdrawn. The appellants are directed to pay the necessary Court fee, if any, on the enhanced award amount. No costs.

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rst/dpa

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

- 1.The I Additional District and Sessions Judge,
The Motor Accident Claims Tribunal,
Cuddalore.
- 2.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

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