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C.M.A. No.1670 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No. 1670 of 2023

1.G. Bakkiyam
2.Minor G. Vignesh
3.Minor G. Mohanraj
(Minor 2 & 3 rep. By their mother
1st appellant)

...

Appellants

Vs.

1.P. Karthikeyan
2.The Branch Manager,
The New India Assurance Co.Ltd,
Thiru-Vi-Ka Street,
Villupuram.

...

Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P. No.32 of 2019 dated 16.08.2022 on the file of the Motor Accident Claims Tribunal / Special District Judge, Villupuram.



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For Appellants : Ms.Ramya V. Rao

For Respondents : Ms.R.Sreevidhya for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation awarded by the Tribunal in M.C.O.P. No.32 of 2019 dated 16.08.2022.

2. By consent of the learned counsel appearing for the appellant as well as learned counsel appearing for the 2nd respondent, this appeal is taken up for final hearing at the admission stage itself.

3. The appellants filed the above said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Gunasekar, who died in the accident that took place on 02.05.2018.



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4. According to the appellants, on the date of accident, when the deceased Gunasekar was riding his tyre cart towards vadakkunemilli, keeping extreme left to Tirukoilur to TV Nallur Salai, near Kuppusamy Casuarina Thoppe, Andarayanallur, the driver of the Multi Axile goods vehicle bearing Regn.No.TN25 BD 8566, belonging to the 1st respondent came from Tiruvennainallur to Tirukoilur direction in a rash and negligent manner behind the deceased and without sounding the horn, hit behind the deceased. In the accident, the said Gunasekar sustained fatal injuries and died on the spot. Hence, the appellants filed claim petition claiming compensation.

5. The 1st respondent remained exparte before the Tribunal.

6. The 2nd respondent filed counter statement and denied all the averments made by the appellants in the claim petition. According to the 2nd respondent, the accident occurred only due to the negligent act of the



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deceased who did not have any reflector for caution or any battery operated lamp in is tyre cart in the night and thus invited the accident. In any event, the total compensation claimed by the appellants are excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st appellant examined herself as PW1, claimant in other MCOP No.327 of 2021 was examined as PW2, one Samikannu, eye witness to the accident was examined as PW3. Fourteen documents were marked Exs.P.1 to P.14. Neither document was marked nor witness was examined on the side of the respondents.

8. 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 vehicle belonging to the first respondent and directed the second respondent/insurance company being the insurer of the vehicle to pay a sum of Rs.19,42,000/- as compensation to the appellants.



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10. The learned counsel appearing for the appellants submitted that the amount of compensation awarded by the Tribunal is meagre. Though the appellants have established the avocation of the deceased, the Tribunal had taken the notional income of the deceased as Rs.10,000/- per month for the accident which took place in the year 2018 which is meagre. Considering the avocation, the Tribunal ought to have fixed a higher notional income and prayed for enhancement of compensation.

11. The learned counsel for the 2nd respondent, per contra, submitted that the appellants have not substantiated their claim to show that the deceased was earning a sum of Rs.25,000/- per month. In such circumstances, the Tribunal had rightly fixed notional income of the deceased



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at Rs.10,000/- which is not meagre. The compensation awarded under the other heads are also just and reasonable and hence prayed for dismissing the appeal.

12. Heard the learned counsel appearing for the appellants as well as 2nd respondent and perused the materials available on record. Notice to the first respondent has been dispensed with vide order of this court dated 19.06.2023 in CMP No.11601 of 2023 in CMA SR No.68575 of 2023.

13. The only issue involved in this appeal is whether the amount of compensation awarded by the Tribunal is just and reasonable.

14. From the award of the Tribunal, it is seen that the appellants have marked Ex.P8-Identity card of the deceased, issued by the Association of Bullock Cart Workers. It is the case of the appellants that the deceased owned a bullock cart and was earning Rs.25,000/- per month. However, they have not produced any document to substantiate their claim. Considering the



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fact that at the time of accident, the deceased was owning a bullock cart, the year of accident and the cost inflation index, this court is of the view that it would be just and reasonable to fix the notional income of the deceased at Rs.14,000/- per month. The deceased was aged 38 years at the time of accident and therefore, the appellants are entitled to increase of 40% towards future prospects. The multiplier applicable is 16. Since there are three dependants of the deceased, 1/3rd has to be deducted towards personal expenses. Thus, the compensation awarded by the Tribunal under the head loss of income is modified as follows -

$$\text{Rs.14,000} + 5600 (14000 \times 40\%) \times 12 \times 16 \times 2/3 = \text{Rs.25,08,800/-}$$

15. 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.19,42,000/- to Rs.26,58,800/-, break-up as follows -



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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	17,92,000/-	25,08,800/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Damages to clothes	15,000/-	15,000/-	Confirmed
4.	Loss of love & affection	1,20,000/-	1,20,000/-	Confirmed
	Total	19,42,000/-	26,58,800/-	Enhanced by Rs.7,16,800/-

16. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.19,42,000/- is hereby enhanced to Rs.26,58,800/- 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 a receipt of copy of this Judgment. On such deposit, the 1st appellant is permitted to withdraw her share of the



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award amount along with proportionate interest and costs, less the amount if any, already withdrawn, on the basis of apportionment fixed by the Tribunal.

The share of the minor appellants 2 & 3 are directed to be deposited in any one of the Nationalised Bank, till the minor appellants attain majority. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

02.08.2023

rgr

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Villupuram.

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

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SUNDER MOHAN, J

rgr

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Dated: 02.08.2023