



WEB COPY



C.M.A. No.1175 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1175 of 2023

Manikandan

...

Appellant

Vs.

1.Somasundaram

2.IFFCO Tokio General Insurance Co. Ltd.,

1st Floor, Darling Building,

Durgam Road, Kallakurichi

...

Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 02.01.2023 made in MCOP No.191 of 2020 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Villupuram @ Kallakurichi.

For Appellants : Mr.Amar Dineshbhai Pandiya

For Respondents : Mr.B.Sivakolappan for R2



C.M.A. No.1175 of 2023

J U D G M E N T

WEB COPY

This Civil Miscellaneous Appeal has been filed by the appellant challenging the quantum of compensation awarded by the Tribunal

2. The appellant filed claim petition in M.C.O.P. No.191 of 2020 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Villupuram @ Kallakurichi claiming a sum of Rs.30,00,000/- as compensation for the death of one Kavitha who died in the accident that took place on 15.01.2020.

3. According to the appellant, on 15.01.2020 at about 10.00 hrs. while the deceased Kavitha was walking on the left side of the road near Trichy to Thanjavur Sasthira College opposite, the 1st respondent driver drove the car bearing Regn.No.TN86 B 0438 in a rash and negligent manner and dashed against the deceased and caused the accident. In the accident, the said Kavitha died and hence the appellant filed claim petition claiming compensation against the respondents.



C.M.A. No.1175 of 2023

WEB COPY 4. The first respondent remained exparte before the Tribunal.

5. The second respondent filed counter statement denying the averments made in the claim petition. It is stated that the driver of the car drove the same in normal speed by adhering traffic rules; that the deceased without caution suddenly fell down in the main road and thus the accident occurred; that hence, the first respondent is not responsible for the accident and that the second respondent is not liable to pay compensation to the appellant. The second respondent also denied the age, occupation and monthly income of the deceased and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined himself as PW1 and marked eleven documents as Exs.P1 to P11. On the side of the second respondent neither document was marked nor witness was examined.



C.M.A. No.1175 of 2023

7. The Tribunal, considering the oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the car belonging to the 1st respondent and directed the second respondent to pay a sum of Rs.13,29,600/- as compensation to the appellant, at the first instance and recover the same from the first respondent, owner of the vehicle.

8. Aggrieved by the said order, the appellant has preferred the instant appeal seeking enhancement of compensation.

9. The learned counsel appearing for the appellant submitted that though the appellant had established that the deceased was working as a vegetable vendor, the Tribunal fixed only a sum of Rs.6,000/- per month as the notional income which is very meagre for the accident which took place in the year 2020. Considering the cost inflation index and the nature of avocation, the Tribunal ought to have fixed Rs.20,000/- per month as the notional income of the deceased and hence prayed that the compensation under the head loss of dependency has to be enhanced.



C.M.A. No.1175 of 2023

WEB COPY 10. The learned counsel for the second respondent per contra submitted that though PW1 had stated in the claim petition that the deceased was working as a vegetable vendor, he had admitted in the cross examination that she was working in a garment factory. In view of the contradiction in the evidence, the Tribunal was right in fixing the notional income at Rs.6,000/- per month. The learned counsel further submitted that the award of compensation under the head loss of love & affection in addition to loss of consortium is erroneous. The amount awarded at Rs.25,000/- towards funeral expenses is excessive and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant as well as the second respondent and perused the materials available on record.

12. From the materials on record, it is seen that the deceased was aged 25 years at the time of accident. The appellant has not established the income of the deceased. In the cross examination, PW1 has deposed that the



C.M.A. No.1175 of 2023

deceased was working in a garment factory. This Court is of the view that it would not really make any difference while computing monthly income on the basis of notional income. The accident took place in the year 2020. Considering the evidence on record, age of the deceased and the year of accident, this Court is of the view that it would be just and reasonable to fix a sum of Rs.15,000/- per month as notional income of the deceased. The appellant is entitled to 40% enhancement towards future prospects and the applicable multiplier is 18. Thus, deducting 1/3rd towards personal expenses, the compensation towards loss of dependency is calculated as follows -

$$15,000 + 6000 (15000 \times 40\%) \times 12 \times 18 \times 2/3 = 30,24,000/-$$

13. The appellant is not entitled to compensation under the head loss of love & affection since a sum of Rs.40,000/- has been awarded by the Tribunal under the head loss of consortium. Hence, the amount of Rs.40000/- awarded towards loss of love & affection is set aside. The amount of Rs.25,000/- awarded towards funeral expenses is on the higher side and



C.M.A. No.1175 of 2023

hence the same is reduced to Rs.15,000/-. The amount of Rs.15,000/- awarded by the Tribunal towards loss of estate is reasonable and hence the same is confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.13,29,600/- to Rs.30,94,000/-, 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 dependency	12,09,600/-	30,24,000/-	Enhanced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Funeral expenses	25,000/-	15,000/-	Reduced
4.	Loss of love and affection to the petitioner	40,000/-	-	Set aside
5.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	17,52,200/-	30,94,000/-	Enhanced by Rs.13,41,800/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,52,200/- is hereby enhanced to Rs.30,94,000/- 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



C.M.A. No.1175 of 2023

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, owner of the vehicle. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

16.08.2023

rgr

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The III Additional District Judge,
Motor Accident Claims Tribunal,
Villupuram @ Kallakurichi.

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



WEB COPY



C.M.A. No.1175 of 2023

SUNDER MOHAN, J.

rgr

C.M.A. No.1175 of 2023

Dated: 16.08.2023



C.M.A. No.1175 of 2023

C.M.A.No.1175 of 2023

SUNDER MOHAN,J.

Today, the matter is listed under the caption “For being spoken to” at the instance of the learned counsel for the appellant.

2. When the matter is taken up for hearing, the learned counsel for the appellant brought it to the notice of the Court that in the 13th and 14th paragraph of the order, the amount awarded by the Tribunal has been wrongly stated.

3. Accordingly, the 13th and 14th paragraph of the order shall be amended as follows:-

i) In the Tabular column, the total amount awarded by Tribunal “Rs.17,52,200/-” shall be replaced with “Rs.13,29,600/-” and the enhanced amount in the Award confirmed or enhanced or granted column “Rs.13,41,800/-” shall be replaced with “Rs.17,64,400/-”

ii) In the 3rd line of 14th paragraph of the order, the amount “Rs.17,52,200/-” shall be replaced with “Rs.13,29,600/-”.



WEB COPY



C.M.A. No.1175 of 2023

SUNDER MOHAN,J.

nr

4. Registry is directed to issue fresh order copy by incorporating the above said changes.

15.09.2023

nr

C.M.A.No.1175 of 2023