



C.M.A. No.1923 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1923 of 2022

1.Ponni

2.Chinnakannu

..

Appellants

Vs.

1.The Chairman

Sreenivasa Engineering Collge,

B.Pallipatti Via

Bommidi Post,

Pappireddipatti Taluk

Dharmapuri District.

2.National Insurance Company Limited,

Branch Office, No.37/2E

Salem Main Road,

Railway Station P.B.19,

Mettur Dam, Salem District.

..

Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.09.2019 made in MCOP No.444 of 2018 on the file of Motor Accident Claims Tribunal, Special District Judge, Dharmapuri.



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For Appellants : Mr.D.Rameshkumar

For Respondents : No appearance for R1
Mrs.R.Sreevidhya for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the award dated 25.09.2019 made in MCOP No.444 of 2018 on the file of Motor Accident Claims Tribunal, Special District Judge, Dharmapuri.

2. The appellants filed the above said claim petition claiming a sum of Rs50,00,000/- as compensation from the respondents for the death of one Sivakumar who died in the accident that took place on 07.02.2018.

3. According to the appellants, on 07.02.2018, while the deceased Sivakumar was riding the Hero Honda Splendor Pro motorcylce bearing Regn.No.TN77 B 3350 in the Bommidi – Kadathur Main Road, near Vathalmalai road junction, Sungarahalli Village, the driver of the bus belonging to the first respondent came in the opposite direction, overtook another bus and



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rammed the two wheeler of the deceased. In the said accident, the deceased sustained head injuries and died in the hospital. Hence, the appellants filed the claim petition claiming compensation against the respondents.

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

5. The 2nd respondent filed counter statement denying the averments made in the claim petition including the manner of accident. The accident occurred only due to the negligent riding of two wheeler by the deceased who collided with the bus. The appellants have not impleaded the owner and insurer of the motorcycle and hence the claim petition is bad for non-joinder of necessary parties. The 2nd respondent denied the age, avocation and income of the deceased. The total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 2nd appellant examined himself as PW1 and one Nagaraj, pillion rider, who is the eye-witness to the accident was examined as



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PW2. Fourteen documents were marked as Exs.P.1 to P.14. On the side of the respondents, one Balakrishnan was examined as RW1 and two documents were marked as Exs.R1 & R2.

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 bus belonging to the first respondent and directed the 2nd respondent / Insurance company to pay a sum of Rs.13,15,200/- as compensation to the appellants.

8. Challenging the quantum of compensation awarded by the Tribunal, the appellants have filed the instant appeal.

9. The learned counsel appearing for the appellants submitted that the Tribunal erred in fixing the notional income of the deceased as Rs.9,000/- per month though the appellants have established the fact that the deceased, a M.Com graduate was working as a milk procuring agent and was earning more than Rs.30,000/- per month. The learned counsel further submitted that the



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Tribunal has not awarded any compensation towards loss of love and affection and transportation charges. The compensation awarded by the Tribunal under other heads are also meagre and prayed for enhancement of compensation.

10. Per contra, the learned counsel for the 2nd respondent / Insurance Company contended that though the appellants have claimed that the deceased was earning more than Rs.30,000/- per month as a milk procuring agent, they failed to substantiate the same. They have only produced Exs.P9 & P10 to show that the deceased was a M.Com graduate. In the absence of any documentary evidence, the notional income fixed by the Tribunal at Rs.9,000/- per month is reasonable and prayed for dismissal of the appeal.

11. Though notice has been served on the first respondent and their name has been printed in the cause list, there is no representation for them.

12. Heard the learned counsel appearing for the appellants as well as 2nd respondent and perused the materials available on record.



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13. The only question involved in the instant appeal is “whether the quantum of compensation awarded by the Tribunal is just and reasonable”.

14. From the award of the Tribunal, it is seen that the appellants have produced Exs.P9 & P10 – Transfer certificate and M.Com Graduate certificate issued by Bharathiar University during April 2016 to establish that the deceased secured First Class. PW1, father of deceased has stated that the deceased was working as a milk procuring agent. However, no documents have been marked by the appellants to prove the avocation and income of the deceased. Considering the fact that the deceased was a M.Com graduate, passed out in First Class and the 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.15,000/- per month. The deceased was aged 26 years at the time of accident. The multiplier applicable is 17. By applying multiplier 17, adding 40% towards future prospects and deducting 50% towards personal expenses of the deceased, since he is a bachelor, the compensation under the head pecuniary loss is calculated as follows -

$$15,000 + 6000 (15000 \times 40\%) \times 12 \times 17 \times 50\% = 21,42,000/-$$



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15. It is also seen that the Tribunal has not awarded compensation towards filial consortium to the appellants, who are the parents of the deceased. Hence a sum of Rs.40,000/- each is awarded as compensation towards filial consortium to the appellants. The compensation awarded by the Tribunal under other heads are just and reasonable and hence confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.13,15,200/- to Rs.22,52,000/- 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.	Compensation for pecuniary loss	12,85,200/-	21,42,000/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Filial Consortium	-	80,000/-	Granted
	Total	13,15,200/-	22,52,000/-	Enhanced by Rs.9,36,800/-



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16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,15,200/- is hereby enhanced to Rs.22,52,000/- 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 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. On such deposit, the appellants are permitted to withdraw their share of the award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The appellants are directed to pay necessary court fee on the enhanced amount if any. No costs.

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rgr

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN, J

rgr

To

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

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

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Dated: 31.07.2023