



C.M.A.No.1760 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1760 of 2023

1.A. Govindasamy Reddy
2.S. Padma
3.S. Kanchana
4.S. Kalpana
5.B. Rajeswari

... Appellants

Vs

1.P. Sai Ravi Kiran

2.National Insurance Company Limited,
Motor Third Party Cell,
No.46, Moore Street, III Floor,
Chennai – 600 001.
(R1 set ex parte before the Tribunal)

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 14.03.2019 passed in M.C.O.P.No.1612 of 2016 on the file of the Motor Accident Claims Tribunal, Chennai (in the II Court, Court of Small Causes) and to enhance the award amount in the interest of justice.

For Appellants	: Ms. M. Sunithi Abirami
For Respondents	: Mr. S. Vadivel, 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 14.03.2019 made in M.C.O.P. No.1612 of 2016 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2. The appellants filed M.C.O.P. No.1612 of 2016 on the file of the the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai claiming a sum of Rs.25,00,000/- as compensation for the death of one Ranemma @ Raniammal, who died in the accident that took place on 11.12.2015.

3. According to the appellants, on 11.12.2015 at about 15.30 hours, while the deceased Ranemma @ Raniammal was travelling in an Auto Rickshaw bearing Registration No.AP-26-TD-1394 on the National Highway from Chennai to Tada direction, near Sri City Zero Cross Road, the driver of the car bearing Registration No.AP-26-AZ-1111 drove the same in a rash and negligent manner, came from behind and hit the Auto



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and caused the accident. In the above said accident, the said Ranemma @ Raniammal sustained grievous injuries and died in the Hospital on 13.12.2015. Hence, the appellants filed claim petition claiming compensation against the respondents.

4. The first respondent remained ex parte before the Tribunal.

5. The second respondent filed a counter statement denying all the averments made by the appellants in the claim petition. According to the respondent, the Auto rickshaw was overloaded, driven in a rash and negligent manner by the driver and while turning sharply caused injuries to the passengers; that in any case the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. The 4th appellant examined herself as PW1 and Govindasamy, eye-witness to the accident was examined as PW2. Eight documents were marked as Ex.P.1 to Ex.P.8. The second respondent did not examine any witness but marked Ex.R1.



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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 rash and negligent driving by the driver of the first respondent and directed the second respondent to pay a sum of Rs.7,75,000/- as compensation to the appellants. Aggrieved by the said order, the appellants have preferred the present appeal seeking enhancement of compensation.

8. The learned counsel for the appellants submitted that the quantum of compensation awarded by the Tribunal is meagre, in as much as the Tribunal fixed only a sum of Rs.5,000/- as notional income. Though it was established by the appellants that the deceased was working as a Coolie and was earning Rs.500/- per day, considering the cost inflation index and other factors, the Tribunal ought to have fixed higher notional income and prayed for allowing the appeal.

9. The first respondent remained ex parte before the Tribunal and hence, the learned counsel for the appellants submitted that notice to first respondent may be dispensed with and hence, dispensed with.



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10. The learned counsel for the second respondent per contra submitted that the deceased was 55 years old and no evidence has been let in to prove her avocation and income. The appellants 2 to 5 who are the children of the deceased are well settled in life and are not dependants of the deceased. In the absence of evidence, to prove the avocation and income, the Tribunal was right in fixing the notional income as Rs.5,000/- per month and there is no reason to interfere with the award and therefore, prayed for dismissal of the appeal.

11. The only question in the instant appeal is-

Whether the notional income fixed by the Tribunal is just and reasonable?

12. Admittedly, the deceased was 55 years at the time of accident. P.W.1 had stated that the deceased was working as a Coolie and was earning Rs.500/- per day. No documentary evidence has been produced to establish the income of the deceased. However, considering the age of the deceased, avocation and year of accident, this Court is of the view that it would be reasonable to fix Rs.10,000/- per month as notional income of the



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deceased. She is entitled to 10% enhancement towards future prospects.

The multiplier applicable is 11. Since there are 5 dependants, 1/ 4 of her income has to be deducted towards her personal expenses. Thus, the award of compensation under the head loss of income is calculated as follows-
 $10,000 + 1,000 \quad (10,000 \times 10\%) \quad \times 12 \times 11 \times 3/4 = \text{Rs.}10,89,000/-$. 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.7,75,000/- to Rs.13,19,000/-, 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	5,44,500/-	10,89,000/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of consortium	40,000/-	40,000/-	Confirmed
4.	Loss of love and affection (Rs.40,000/- each to the petitioners 2 to 5)	40,000/- (1,60,000/-)	1,60,000/-	Confirmed
	Total	7,74,500/- rounded off to Rs.7,75,000/-	13,19,000/-	Enhanced by Rs.5,44,000/-



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13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,75,000/- is hereby enhanced to Rs.13,19,000/- 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 the their share of the 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 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
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SUNDER MOHAN, J.

AT

To

1.The Motor Accident Claims Tribunal,
II Court of Small Causes, Chennai.

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

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