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C.M.A.No.1742 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1742 of 2023

1.Chellammal
2.Sakthivel
3.Devananthan

...Appellants/Petitioners

Vs.

1.E.Dinesh
2.Balaji Allianz General Insurance Company Limited,
Old No.276 & 277, New No.497 & 498,
Insan Kattina Building, V Floor,
Poonamallee High Road, Arumbakkam,
Chennai – 600 106.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.10.2022 and made in M.A.C.T.O.P.No.2282 of 2020 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.



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For Appellants : Mr.A.G.F.Terry Chella Raja

For Respondents : R1-Exparte

Mr.G.Vasudevan 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 granted by the Tribunal in the award dated 28.10.2022 made in MACT OP.No.2282 of 2020 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

2. The appellants filed MACT.OP.No.2282 of 2020 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai claiming a sum of Rs.40,00,000/- as compensation for the death of one Ramu, who died in the road accident that took place on 12.11.2019.

3. According to the appellants, on 12.11.2019 at about 4.00 p.m., while the deceased Ramu was walking in the extreme left side of mud road near Ravuthar Nallar Lake, Ezhil Nagar, an Ashok Leyland Dost vehicle



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bearing Regn.No.TN04-AP-7737 driven in a rash and negligent manner hit the deceased from behind. In the accident, the said deceased sustained grievous injuries all over the body and died on the way to the Hospital. The deceased was aged 59 years at the time of the accident and was an Agricultural Coolie earning Rs.35,000/- per month. Hence, the appellants filed a claim petition claiming compensation against the respondents.

4.The 1st respondent remained ex-parte before the Tribunal.

5. The 2nd respondent/Insurance Company filed a counter statement denying all the averments made by the appellants in the claim petition and stated that the deceased crossed the road without noticing the vehicles in the carriage way, without adopting the road regulations, invited the accident; that the accident occurred due to the negligent act of the deceased; that the driver of the first respondent's vehicle did not have a valid driving license and was not insured with them at the time of the accident and stated that in any event, the total compensation claimed by the appellants are highly excessive and prayed for dismissal of the claim petition.



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6. Before the Tribunal, the appellants examined two witnesses as P.W.1

and P.W.2 and marked eleven documents as Exs.P.1 to P.11.

The second respondent examined S.Sumesh, Legal Officer of the second respondent's company as R.W.1 and marked five documents as Exs.R.1 to R.5.

7. The Tribunal after considering the oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the offending vehicle and directed the second respondent to pay a sum of Rs.7,83,600/- as compensation to the appellants.

8. Aggrieved by the said order, the appellants have preferred the present appeal seeking enhancement of compensation.

9. Learned counsel for the appellants submitted that the award of compensation is meagre, since the Tribunal fixed the notional income at Rs. 8,000/- per month; that the appellants have established that the deceased



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was working as an Agricultural Coolie and earning substantially and hence, prayed for enhancement of the compensation.

10. The learned counsel for the appellants filed a verified petition dated 05.06.2022 that Court notice to the first respondent may be dispensed with since he remained *exparte* before the Tribunal. Hence, notice to the first respondent is dispensed with.

11. The learned counsel for the second respondent, *per contra*, submitted that the Tribunal had awarded just and reasonable compensation; that the appellants had not produced any document to prove the avocation or the income of the deceased; that the deceased was aged nearly 60 years at the time of the accident; that considering all the above factors, the Tribunal rightly fixed notional income as Rs.8,000/- per month and hence, submitted that there is no _ to interfere with the award and prayed for the dismissal of the appeal.



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

13. The only question in the instant appeal is whether the award of compensation is just and reasonable?

14. On perusal of the records, this Court finds that the appellants have established that the deceased was working as an Agricultural Coolie through the evidence of P.W.1/son of the deceased. However, no document has been produced to prove the income of the deceased. This Court is of the view that the notional income fixed by the Tribunal is meagre. Considering the age, avocation of the deceased and the year of the accident, this Court is of the view that it would be just and reasonable to fix Rs.14,000/- per month as notional income for the deceased. The deceased was aged 59 years at the time of the accident hence, he is entitled to enhancement of 10% towards future prospects and the multiplier applicable is 9. Since there are three dependents, 1/3rd of his income has to be deducted towards the personal expenses of the deceased. Thus, the compensation awarded under the head Loss of Income/



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Dependency is modified as follows:-

WEB COPY Rs. 14,000 + 1400 (10% X 14000) X 12 X 9 X 2/3 = 11,08,800/-

15. The compensation awarded by the Tribunal under other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.7,83,600/- to Rs.12,58,800/-, 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 Income Dependency	6,33,600/-	11,08,800/-	Enhanced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	Loss of Consortium (Rs.40,000X3)	1,20,000/-	1,20,000/-	Confirmed
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total	7,83,600/-	12,58,800/-	Enhanced by Rs.4,75,200/-



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16. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,83,600/- is hereby enhanced to Rs.12,58,800/- together with interest at the rate of 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 receipt of a copy of this Judgment. On such deposit, the appellants are permitted to withdraw 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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To

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

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



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SUNDER MOHAN, J.

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