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C.M.A.No.1648 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1648 of 2023

and

C.M.P.No.16288 of 2023

M/s. Reliance General Insurance Company Limited,
Reliance House, 6th Floor,
No.6, Haddows Road, Nungambakkam,
Chennai – 6.

... Appellant

Vs

1.Seetha
2.Minor. T. Dheepesh
[Minor rep., by his mother, NF Seetha]
3.Vennila
4.G. Venkatesan
5.T. Murugesan

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment dated 11.03.2020 and decree dated 27.07.2021 made in M.C.O.P.No.1918 of 2017 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.M.L. Ganesh

For Respondents : Ms.M.Sunithi Abirami



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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 appellant challenging the quantum of compensation granted by the Tribunal in the award dated 11.03.2020 made in M.C.O.P. No.1918 of 2017 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2. The respondents 1 to 4 filed M.C.O.P. No.1918 of 2017 on the file of the the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai claiming a sum of Rs.35,00,000/- as compensation for the death of one Thiagarajan, who died in the accident that took place on 03.12.2016.

3. According to the respondents, on 03.12.2016 at about 13.00 hours, while the deceased Thiagarajan was riding the motorcycle bearing Registration No.TN-19-R-4178 proceeding on the Tindivanam - Chennai National Highways, near Pukkathurai Koot road, the Car bearing registration No.TN-14-H-8870 driven by its driver in a rash and negligent manner endangering public safety, came from behind and hit against the motorcycle and caused the accident; that in the above accident, the said



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Thiyagarajan sustained grievous injuries; that he was immediately taken to Government Hospital at Chengalpattu and thereafter referred to Rajiv Gandhi Government General Hospital, where he succumbed to injuries. Hence, the appellants filed claim petition claiming compensation against the respondents.

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

5. The appellant filed a counter statement denying all the averments made by the appellants in the claim petition including the manner of accident; stating that the appellant is not liable to pay compensation to the respondents; that the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. The 1st respondent examined herself as P.W.1 and examined two other witnesses as P.W.2 and P.W.3 and marked Ex.P1 to Ex.P13. Neither documents were marked nor witnesses were examined on the side of the appellant.



7. The Tribunal after considering the evidence and documents filed on the side of the respondents held that the accident occurred due to rash and negligent driving by the driver of the fifth respondent and directed the appellant to pay a sum of Rs.30,63,400/- as compensation to the respondents. Aggrieved over the said award, the appellant / Insurance Company has filed the present appeal.

8. The learned counsel for the appellant submitted that the award of compensation by the Tribunal is excessive and there is no challenge with regard to the negligence; that the Tribunal had granted 50% enhancement towards future prospects instead of 40% although, it is an admitted fact that the deceased was working in a private concern. That apart, the Tribunal erred in awarding compensation separately under the head loss of love and affection, parental consortium and filial consortium. The 1st respondent is entitled only to loss of consortium at Rs.40,000/-. The respondents 2 to 4 who are the son and parents of the deceased are each entitled to Rs.40,000/- under the head parental consortium and filial consortium respectively. Therefore, compensation under the head loss of love and affection has to be set aside and the amounts awarded under the head loss of parental



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consortium and filial consortium has to be reduced and prayed for allowing the appeal.

9. The learned counsel for the respondents per contra submitted that the award of compensation is just and reasonable. The minor son who is just 7 ½ months old at the time of accident had lost his father and therefore, the Tribunal was right in awarding Rs.1,00,000/- towards loss of love and affection. Further, the award of compensation under the other heads are reasonable and no interference is called for and prayed for dismissal of the appeal.

10. The only question involved in this instant appeal is-

Whether the compensation awarded by the Tribunal is just and reasonable?

11. From the materials on record, it is seen that the Tribunal had fixed the income of the deceased as Rs.11,300/- per month based on Ex.P13 salary slips produced on the side of the respondents and hence, the same cannot be faulted. The Tribunal, however had granted 50% enhancement



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towards future prospects which is erroneous. The Tribunal ought to have granted only 40%, as the deceased was working in a private concern. The compensation under the heads namely loss of love and affection, parental consortium and filial consortium are split under three heads which is incorrect. The 2nd respondent, son of the deceased has lost his father at his young age. Hence, he is entitled to Rs.40,000/- towards parental consortium. Similarly, the respondents 3 and 4, who are the parents of the deceased are entitled to Rs.40,000/- each towards filial consortium. Therefore, the compensation under the head loss of love and affection is set aside. The compensation awarded under other heads are reasonable and hence, the same are confirmed. The compensation under the head loss of dependency is calculated as follows:-

$$11,300+4520(11,300 \times 40\%) \times 17 \times 12 \times 3/4 = \text{Rs.}24,20,460/-$$

12. Thus, the total compensation awarded by the Tribunal is reduced to Rs.26,10,460/-, 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	25,93,300/-	24,20,460/-	Reduced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed



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3.	Loss of love and affection	1,50,000/-	-	Set aside
4.	Parental consortium	2,00,000/-	40,000/-	Reduced
5.	Filial consortium	50,000/-	80,000/-	Enhanced
6.	Medical expenses	15,000/-	15,000/-	Confirmed
7.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	30,63,350/-	26,10,460/-	Reduced by Rs.4,52,890/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.30,63,350/- is hereby reduced to Rs.26,10,460/- 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 appellant / 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 eight (8) weeks from the date of a receipt of copy of this Judgment. On such deposit, the respondents 1, 3 & 4 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 share of the minor 2nd respondent



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is directed to be deposited in any one of the Nationalised Bank till the minor appellant attains majority. However, the 1st respondent, mother of the minor 2nd respondent is permitted to withdraw the accrued interest once in three months. The appellant / Insurance Company is permitted to withdraw the excess amount lying in the credit of MCOP.No.1918 of 2017, if the entire award amount has already deposited by them. Consequently, connected miscellaneous petition is closed. No costs.

01.08.2023

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.

C.M.A.No.1648 of 2023 and
C.M.P.No.16288 of 2023

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