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C.M.A.No.1727 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

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1.A.Kavitha

2.A.Sharmila

3.Minor A.Arjun

[Minor represented by Natural
Guardian and Next Friend A.Kavitha,
1st appellant herein.]

Thaiyalnayagi (Died)

..Appellants

Vs.

1.R.Thamilarasan

2.The Divisional Manager

The Oriental Insurance Co. Ltd.,

Opposite to Cuddalore New Town Police Station,

Bharathi Road, Cuddalore – 607 001.

..Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.1371 of 2019 dated 31.03.2022 on the file of the Motor Accident Claims Tribunal/ (Principal District Judge, Cuddalore).



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For Appellants : Mr.S.Chakravarthi

For Respondents : Mr.S.Senthil Kumar for R2

R1 – No appearance

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 31.03.2022 made in M.C.O.P.No.1371 of 2019 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), Cuddalore.

2. The appellants filed M.C.O.P.No.1371 of 2019 on the file of the Motor Accident Claims Tribunal, (Principal District Judge) Cuddalore, claiming a sum of Rs.75,00,000/- as compensation for the death of one Arivazhagan @ Arivu, who died in the road accident that took place on 18.01.2018.

3. The appellants are the wife and children of the deceased. According to the appellants, on 18.01.2018 at about 7.30 p.m., when the



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deceased was walking from East to West direction, keeping extreme left, opposite to Pandanallur New Bus Stand, the 1st respondent's Hero Passion Pro Motorcycle bearing Reg.No.TN-49-AL-5600 came from behind at a great speed in a rash and negligent manner and dashed against the deceased, in which the deceased sustained fatal injuries. Immediately he was admitted in Anbu Hospital, Kumbakonam and he was taken for further treatment to KG Multi Speciality Hospital and Research Centre, Thanjavur and Government Medical College Hospital, Thanjavur. In spite of proper treatment being given, he died on 07.02.2018. The deceased being the driver cum owner of the Mahindra Tourister Maxi Cab and he was engaged on contract basis for transportation of the school students and being the owner of Ambika Sweets Stall, he was earning a sum of Rs.1,00,000/- per month. Hence, the appellants filed a claim petition claiming compensation against the respondents.

4. The 1st respondent is the owner of the motorcycle and the 2nd respondent is Insurer of the offending vehicle.



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5. The 1st respondent filed counter statement denying all the averments made by the appellants in the claim petition and further stated that the accident had not occurred due to the rash and negligent driving of his vehicle. He further stated that the deceased had suddenly crossed the road, due to which accident had occurred and in any case, the claim is excessive; that even if it is held that the accident took place on account of his negligent driving, the 2nd respondent as an Insurer of the vehicle is liable to pay the compensation and prayed for dismissal of the claim petition.

6. The 2nd respondent filed counter statement denying all the averments made by the appellants and further stated that there was 2 days delay in filing the complaint; that the accident occurred only due to the negligent act of the deceased. The 2nd respondent also denied the age and avocation of the deceased and stated that the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.



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7. Before the Tribunal, the 1st appellant examined herself as

P.W.1, one K.Saranraj, eye witness to the accident as P.W.2 and Usha, Correspondent of the School in which the deceased was engaged on contract basis for transportation of the school students as PW3. Fifteen documents were marked as Exs.P.1 to P.15. The respondents neither marked any documents nor examined any witness on their side.

8. The Tribunal, after considering the oral and documentary evidence, held that the accident had occurred due to the negligent riding by the rider of the motorcycle belonging to the 1st respondent, insured with the 2nd respondent and directed the 2nd respondent to pay a sum of Rs.14,52,000/- as compensation.

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

10. The learned counsel for the appellants submitted that though the appellants examined PW3, the Correspondent of the School who had engaged the deceased on contract basis for transportation of the



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school students, the Tribunal had erroneously rejected the evidence of PW3 and Exs.P10 and P13. The learned counsel further submitted that the award under the head loss of love and affection has to be enhanced to Rs.80,000/- as appellants 2 and 3 would be entitled to Rs.40,000/- each.

11. Though notice has been served on the 1st respondent, he has not appeared either in person or through counsel.

12. The learned counsel for the 2nd respondent per contra submitted that the Tribunal had considered the evidence of PW3 and found that the Certificates, Ex.P10 and Ex.P13 issued by PW3 cannot be the basis to fix the monthly income of the deceased and that the said finding is correct and no interference is called for in the award of the Tribunal.

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



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14. On perusal of the records, it is seen that the accident is of the year 2018. The appellants had examined PW3, the Correspondent of the School, who had issued ExP13 Income Certificate stating that the deceased was engaged by the School on contract basis for transportation of their school students. PW3 had stated that they had been paying Rs.32,000/- per month to the deceased from 2016 to 2018 for the said purpose. This Court is of the view that there is no reason to disbelieve the evidence of PW3 and the Income Certificate, Ex.P13 issued by her. As per Ex.P13 a sum of Rs.32,000/- per month was paid to the deceased on contract basis. However, the entire sum cannot be taken as income of the deceased. The deceased would have certainly incurred expenditure towards maintenance of the vehicle and for fuel. In the absence of proof of the exact income earned by the deceased, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.17,000/- per month, considering the avocation, year of accident and the evidence on record in the instant case. The deceased was aged 52 years at the time of the accident. Hence, the appellants are entitled to 10% towards future prospects. Thus, the award of compensation under the loss of



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income is calculated as follows:

$$\text{Rs.17,000/-} + 1,700/- (17,000 \times 10\%) \times 12 \times 11 \times 2/3 = \text{Rs.16,45,600/-}$$

15. The appellants 2 and 3 are entitled to Rs.40,000/- each under the head loss of love and affection. The award under the other heads is just and reasonable and hence the same are confirmed. It is also seen that the Tribunal has awarded 8% interest, for which this Court is of the view that the appellants should be entitled to interest at 7.5%. Thus, the total award amount is modified as follows:

<i>Head</i>	<i>Awarded by the Tribunal</i>	<i>Amount awarded in the appeal</i>
Loss of income	Rs.11,61,600/-	Rs.16,45,600/-
Loss of Love and affection	Rs.30,000/-	Rs.80,000/-
Funeral Expenses	Rs.15,000/-	Rs.15,000/-
Loss of Estate	Rs.15,000/-	Rs.15,000/-
Loss of Consortium	Rs.40,000/-	Rs.40,000/-
Medical expenses based on bills	Rs.1,90,287/-	Rs.1,90,287/-
Total	Rs.14,51,887/-	Rs.19,85,887/-

16. Accordingly, this Civil Miscellaneous Appeal is **partly allowed** enhancing the compensation from Rs.14,51,887/- to Rs.19,85,887/- together with interest at 7.5% per annum from the date of



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petition till the date of deposit (excluding the default period if any). The 2nd respondent 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 receipt of a copy of this Judgment. On such deposit, the appellants 1 and 2 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 3rd appellant is directed to be deposited in an Interest bearing fixed deposit in any Nationalized Bank, till the minor appellant attains the age of majority. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

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dsa

Index :Yes/No

Internet :Yes/No

Neutral Citation :Yes/No

Speaking order/Non-Speaking order



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To

1. The Motor Accident Claims Tribunal,
Principal District Judge, Cuddalore.
2. The Section Officer,
VR Section, High Court, Madras.



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SUNDER MOHAN, J.

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