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C.M.A.No.2136 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.2136 of 2023

1.Deepa

2.Minor Subasri

3.Minor Vikasini

4.Rathinammal

5.Palaniappan

... Appellants

Versus

1.P.Kalavathi.

2.United India Insurance Company Limited,
Branch Office, No.14/1-77B, Salem Main Road,
Puduchampalli, Mettur Dam-636403,
Mettur Taluk, Salem District

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 21.11.2019 made in M.C.O.P.No.63 of 2012, on the file of the Motor Accident Claims Tribunal, Sub-Court, Mettur.

For Appellants

: Mr.S.P.Yuvaraj

For R2

: Mr.C.Paranthaman

JUDGMENT

This appeal has been filed by the appellants/claimants challenging the compensation awarded by the Tribunal in M.C.O.P.No.63 of 2012, dated 21.11.2019.



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2.The claim petition was filed stating that on 19.09.2011, at about 03.00 pm., while the deceased was riding his motorcycle, the lorry insured with the 2nd respondent came in a rash and negligent manner, dashed against the vehicle of the deceased; as a result of which, the deceased sustained fatal injuries; thus, the appellants are entitled for compensation.

3.The 1st respondent-owner of the offending vehicle filed a counter stating that the accident did not take place due to the negligence of the lorry driver; and in any case, the lorry was insured with the 2nd respondent.

4.The 2nd respondent-Insurance Company filed a counter denying the averments made in the claim petition and stated that the driver of the lorry did not possess valid driving licence; that the accident took place only due to the negligence of the deceased; that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.



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5.Before the Tribunal, the appellants examined P.W.1 and P.W.2 and marked Exs.P1 to Ex.P18 on their side. The 1st respondent examined herself as R.W1. However, no document was filed on the side of the 1st respondent. The 2nd respondent had neither examined any witness nor marked any document.

6.The Tribunal after considering the oral and documentary evidence, held that the accident took place due to the negligence of the driver of the offending vehicle viz., the lorry, insured with the 2nd respondent and directed the 2nd respondent to pay a sum of Rs.12,90,000/- as compensation to the appellants.

7.Aggrieved over the award passed by the Tribunal, the appellants filed the present appeal seeking for enhancement of compensation.

8.The learned counsel for the appellants submitted that the compensation awarded by the Tribunal requires enhancement, as the Tribunal had not taken into consideration the future prospects, erroneously deducted 1/3rd towards personal expenses and did not award



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any compensation towards loss of love and affection and loss of estate and hence, prayed for enhancement for allowing of the appeal.

9.The learned counsel for the appellants further submitted that since the challenge in the instant appeal is only with regard to the quantum of compensation, notice to the 1st respondent may be dispensed with and he had also made an endorsement to that effect. Hence, notice to the 1st respondent is dispensed with.

10.The learned counsel for the 2nd respondent per contra submitted that the Tribunal had fixed the income based on Ex.P9-salary slip and therefore, the award of the Tribunal cannot be faulted and prayed for dismissal of the appeal.

11.The only question involved in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

12.On perusal of the records, it is seen that the Tribunal had taken into consideration Ex.P9-salary slip, to fix the income of the deceased at Rs.9,640/- per month. The said finding cannot be faulted. However, the



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Tribunal had deducted 1/3 towards Personal expenses. Admittedly there are five dependants and therefore, the Tribunal ought to have deducted 1/4th towards personal expenses. That apart, the Tribunal had not awarded enhancement towards future prospects although the deceased was aged 32 years at the time of the accident. The appellants are entitled for 40% enhancement towards future prospects. Therefore, the award under the head loss of income has to be as follows:

$$\text{Rs.13,496/- (Rs.9,640 + 40\%)} \times 12 \times 16 \times 3/4 = \text{Rs.19,43,424/-}$$

The Tribunal had not awarded any amount towards loss of estate and loss of love and affection to the appellants. Therefore, a sum of Rs.15,000/- is granted towards loss of estate. The 1st appellant is entitled to Rs.40,000/- towards loss of consortium and the appellants 2 to 5 are entitled to Rs.40,000/- each under the head loss of love and affection. The amount awarded by the Tribunal under the head mental agony is set aside. The compensation awarded by the Tribunal under other heads is just and reasonable and the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	12,48,000	19,43,424	Enhanced
2.	Mental Agony	25,000	-	Set Aside
3.	Transportation	2,000	2,000	Confirmed
4.	Funeral Expenses	15,000	15,000	Confirmed
5.	Loss of Estate	-	15,000	Granted
6.	Loss of consortium	-	40,000	Granted
7.	Loss of love and affection	-	1,60,000	Granted
	Total	12,90,000	21,75,424	Enhanced by Rs.8,85,424/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,90,000/- is hereby enhanced to Rs.21,75,424/- 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 2nd 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 1st appellant is permitted to withdraw a



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sum of Rs.7,00,000/- and the appellants 4 and 5 are permitted to withdraw a sum of Rs.1,00,000 each, along with interest and costs, less the amount already withdrawn if any. The appellants 2 and 3 are entitled to share the remaining amount of compensation equally. The share of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalised Bank, till the minors attain majority. The 1st appellant-mother of the appellants 2 and 3 is permitted to withdraw the accrued interest once in three months. It is made clear that the appellants are not entitled to interest for the delay period of 1189 days on the enhanced amount of compensation as per the order of this Court dated 30.08.2023, made in C.M.P.No.15014 of 2023 in C.M.A.SR.81985 of 2023. The appellants are directed to pay the necessary Court fee, if any, on the enhanced award amount. No costs.

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rst/dpa

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN, J.

rst/dpa

To:

- 1.The Subordinate Judge,
The Motor Vehicle Accident Tribunal,
Mettur.
- 2.The Section Officer,
VR Section,
High Court, Madras.

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