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C.M.A. No.1792 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1792 of 2023

1.M.Kumar

2.K.Padma

...

Appellants

Vs.

1.Empee Distilleries Limited

Having its office at No.59, Haris Road,
Pudupet, Chennai – 2.

2.S.B.I. General Insurance Company,

Having its office at “Natraj” 101,201 & 301,
Junction of Western, Express Highway and
Andheikula Road, Andheri 9 (East)

Mumbai – 400 069.

...

Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 14.12.2021 made in MCOP No.296 of 2015 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Judge, Tiruvallur at Poonamallee.



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For Appellants : Mr.K.Varadha Kamaraj

For Respondents : Mr.K.Vinod for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant challenging the quantum of compensation awarded by the Tribunal

2. The appellants filed the claim petition in M.C.O.P. No.296 of 2015 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Judge, Tiruvallur at Poonamallee seeking compensation for the death of one Raji who died in the accident that took place on 10.05.2015.

3. According to the appellants, on 10.05.2015 at about 15.15 hrs. while the deceased Raji was riding in a Pulsor Motorcycle bearing Regn.No.TN20 3K 6307 from North to South on Chettibedu Salai to Kuthambakkam Salai, Opposite to VPN Company, a Tanker Lorry bearing Regn.No.TN01 Q 3646 came in the opposite direction, driven by its driver in a rash and negligent



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manner, hit against the deceased and caused the accident. Hence the appellants filed claim petition claiming compensation against the respondents.

4. The first respondent remained exparte before the Tribunal.

5. The second respondent filed counter statement denying the averments made in the claim petition and stated that the deceased rode the motorcycle in a rash and negligent manner and invited the accident; that the first respondent is not responsible for the accident and hence, the second respondent is not liable to pay compensation to the appellant. The second respondent also denied the age, occupation and monthly income of the deceased and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st appellant examined himself as PW1 and Sampath as PW2. Nine documents were marked as Exs.P1 to P9. On the side of the second respondent, Venkatesan was examined as RW1 and four



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documents were marked as Exs.R1 to R4.

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7. The Tribunal, considering the oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the tractor belonging to the 1st respondent and directed the second respondent/insurance company to pay a sum of Rs.8,66,000/- as compensation to the appellants.

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

9. The learned counsel appearing for the appellants submitted that though the appellants had established that the deceased was working as a welder and earning a sum of Rs.700/- per day, the Tribunal had erroneously fixed a meagre sum of Rs.5000/- per month as notional income of the deceased and hence sought for enhancement of compensation.



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10. The learned counsel for the second respondent, per contra submitted that the award passed by the Tribunal is just and reasonable and prayed for dismissal of the appeal.

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

12. The only issue involved in the instant appeal is whether the notional income fixed by the Tribunal is just and reasonable.

13. From the materials on record, it is seen that though the appellants have in the claim petition and through the evidence of PW1 have stated that the deceased was working as a welder and earning Rs.700/- per day. There is no document to corroborate the said version. Therefore, only a notional income can be fixed for the deceased. However, this court is of the view that the notional income fixed by the Tribunal is meagre. Considering the avocation, age and the year of accident, this Court is of the view that it would



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be just and reasonable to fix a sum of Rs.12,000/- per month as notional income of the deceased. Thus, the compensation towards loss of dependency is calculated as follows -

$$12000 + 4800 (12000 \times 40\%) \times 12 \times 18 \times 50\% = \text{Rs.18,14,400/-}$$

The amounts 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.8,66,000/- to Rs.19,24,400/-, 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	7,56,000/-	18,14,400/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Filial consortium	80,000/-	80,000/-	Confirmed
	Total	8,66,000/-	19,24,400/-	Enhanced by Rs.10,58,400/-



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14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,66,000/- is hereby enhanced to Rs.10,58,400/- 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 a receipt of 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. 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

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN, J.

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To

1. The II Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Tiruvallur at Poonamallee.

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

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Dated: 21.08.2023