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C.M.A. No.1888 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1888 of 2023

- 1.Kavitha
- 2.Vijay
- 3.Ajith
- 4.Surya
- 5.Pachiammal
- 6.Duraisamy

... Appellants

Vs.

- 1.Sivakumar,
S/o. Krishnan
No. 13, Kuttapatti Post, Mettur Taluk,
Salem District.
2. United India Insurance Company Limited,
TPHUB, Peramanoor Main Road,
Salem – 636 007.

.... Respondents



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation amount made in Judgment and decree dated 20.12.2021 made in M.C.O.P.No. 1133 of 2017 on the file of the Motor Accident Claims Tribunal Additional District (Fast Track) Court, Mettur, by allowing this Civil Miscellaneous Appeal.

For Appellants : Mr.S.P.Yuaraj

For Respondents : R1 : Ex-Parte
R2 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants challenging the quantum of compensation granted by the Tribunal in the award dated 20.12.2021 made in MCOP.No.1133 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District (Fast Track) Court, Mettur.

2. The appellants/claimants filed MCOP.No.1133 of 2017 before the Motor Accident Claims Tribunal, Additional District (Fast Track) Court,



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Mettur claiming a sum of Rs.25,00,000/- as compensation for the death of one Ganesan who succumbed to injuries in a road accident that occurred on 25.04.2017. The appellants are legal heirs of the deceased Ganesan.

3. According to the appellants/claimants, on 25.04.2017 at about 5.00 p.m., when the deceased Ganesan was standing on the left side of the Mecheri-Pennagaram Road near Irattaikinaru, Ongaliamman Kovil, a lorry bearing Regn.No.TN-52-X-8931, driven by its driver in a rash and negligent manner, hit against him and his relative, one Thangavel, due to which, the deceased Ganesan sustained fatal injuries on his head and died on the way to hospital. The 1st respondent is the owner of the vehicle and the 2nd respondent is the insurer of the vehicle. Hence, the appellants/claimants, who are wife, children and parents of the deceased Ganesan, filed a claim petition against the respondents 1 and 2 who are owner and insurer of the offending vehicle, claiming compensation of Rs.25,00,000/-. In their claim petition, they have stated that at the time of accident, the deceased was 42 years and he was a weaver by profession and was earning Rs.20,000/- per month and the deceased was the only son for the appellants 5 and 6. Due to the accident,



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the deceased died leaving behind his wife/1st appellant, three sons /appellants 2 to 4 and aged parents/appellants 5 and 6.

4. The 2nd respondent/Insurance Company filed counter denying the averments made by the appellants in the claim petition, including the manner of accident. According to the 2nd respondent, the accident did not occur due to rash and negligent driving of the lorry driver, but due to the negligent act of the deceased. It also denied the avocation and income of the deceased and stated the the respondent was not liable to pay any compensation to the appellants and that the total compensation claimed by the appellants is highly excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellants examined witnesses PW1 to PW3 and marked 24 documents viz., Exs.P.1 to Exs.P.24. The respondents did not examine any witness or marked any documents.

6. The Tribunal, on considering the oral and documentary evidence adduced on the side of the appellants, held that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the 1st



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respondent and insured with the 2nd respondent insurance company. The tribunal directed the 2nd respondent insurance company to pay a sum of Rs.18,02,584/- as compensation to the appellants along with interest at the rate of 7.5% and costs from the date of petition till the date of realisation. Aggrieved by the said order, the appellants have preferred the present appeal seeking enhancement of compensation.

7. The learned counsel for the appellants submitted that since the first respondent remained exparte before the tribunal, notice to first respondent may be dispensed with and to that effect, he has also made an endorsement in this appeal.

8. The learned counsel for the appellants contended that though the appellants have established the fact that the deceased Ganesan was working as a weaver, the Tribunal had fixed a meagre notional monthly income of Rs.11,000/- for the deceased and prayed for enhancement. He further contended that though the claim petition was filed by the wife, children and the parents of the deceased, no compensation was awarded under the head



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'loss of love and affection' for the children and under the head 'loss of filial consortium' for the parents. Thus he prayed for enhancement of the compensation awarded by the tribunal.

9. Per contra, the learned counsel appearing for the second respondent /insurance company submitted that in the absence of any proof either to establish the avocation or income of the deceased, the Tribunal has rightly fixed the notional income at Rs. 11,000/- . Therefore, he prayed for dismissal of the appeal.

10. Heard the learned counsel for the appellants and the learned counsel appearing for the 2nd respondent. Since the first respondent remained exparte before the tribunal, notice to 1st respondent is hereby dispensed with.

11. The only question to be decided in the instant appeal is whether the award of compensation granted by the tribunal is just and reasonable.

12. The accident is of the year 2017. The deceased was survived by



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his wife, three children and his aged parents. PW1 - wife of the deceased has deposed that the deceased was working as a weaver. Considering the age, avocation of the deceased and the year of the accident and the cost inflation index, this court is of the view that it would be just and reasonable to fix the notional income of the deceased at Rs.13,000/- per month. The deceased is entitled to 25% enhancement towards future prospectus. Thus the award of compensation under the head 'loss of income' would be Rs. 13,000 + 3250 = 16250. Applying 14 multiplier and after giving 1/4th deduction towards personal expenses of the deceased, the amount arrived towards loss of income would be

$$16250 \times 12 \times 14 \times 3/4 = 20,47,500$$

13. The tribunal had awarded Rs.40,000/- to the 1st appellant/wife towards loss of consortium. However, it has not awarded any compensation to the children of the deceased towards loss of love and affection and parents of the deceased towards loss of filial consortium. Taking note of the above, this court is of the view that the appellants 2 to 4 each are entitled for compensation of Rs.40,000/- under the head loss of love and affection (3 x



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40,000 =1,20,000) and the appellants 5 and 6/parents of the deceased, each are entitled to Rs.40,000/- towards loss of filial consortium (2 x 40000 = 80000). Thus, towards loss of love and affection, a sum of Rs.40,000/- is awarded to each of the appellants 2 to 4 and towards loss of filial consortium, a sum of Rs.80,000/- is awarded to each of the appellants 5 and 6.

14. As regards, the compensation awarded under the other heads viz., loss of consortium, loss of estate and funeral rights, this court is of the view that the tribunal had awarded just and reasonable amount. Therefore, the compensation awarded by the tribunal under such heads are hereby confirmed.

15. The compensation awarded by the tribunal and the enhanced compensation awarded by this Court are tabulated as follows;

<i>S.No.</i>	<i>Heads</i>	<i>Amount awarded by tribunal</i>	<i>Amount awarded by this court</i>
1	Loss of Income	Rs. 17,32,584	Rs. 20,47,500
2	Loss of consortium	Rs. 40,000	Rs. 40,000



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<i>S.No.</i>	<i>Heads</i>	<i>Amount awarded by tribunal</i>	<i>Amount awarded by this court</i>
3	Loss of estate	Rs. 15,000	Rs. 15,000
4	Funeral rights	Rs. 15,000	Rs. 15,000
5	Loss of love and affection for children (3 x 40000)	----	Rs. 1,20,000
6	Filial consortium for parents (2 x 40000)	-----	Rs. 80,000
	Total	Rs. 18,02,584	Rs. 23,17,500

16. In the result,

- the Civil Miscellaneous Appeal is partly allowed. No costs.
- The compensation awarded by the tribunal at **Rs.18,02,584/-** is enhanced to **Rs.23,17,500/-** along with interest at the rate of 7.5% as awarded by the tribunal.
- The 2nd respondent Insurance Company is directed to deposit the compensation awarded by this Court, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order along with interest and costs as awarded by the tribunal @ 7.5% from the date of petition till the date of deposit. (excluding the default period, if any).



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- On such deposit, the appellants 1 to 6 are permitted to withdraw their share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal
- The appellants are directed to pay the necessary court fee, if any, on the enhanced award amount.

29.08.2023

msr

Index:yes

Speaking order/non speaking order

Neutral Citation: Yes / No

To`

1. Motor Accident Claims Tribunal Additional District
(Fast Track) Court, Mettur
2. The Section Officer
VR Section,
High Court, Madras.

SUNDER MOHAN, J

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