



C.M.A.No.2043 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2043 of 2023

1.Radha @ Radhamani

2.Minor Dinesh

3.Minor Swetha

*(Minors are rep. by NF/Guardian
Mother Radha @ Radhamani)*

4.Sindhamani

... Appellants

Vs.

1.C.Vijayarangan

2.M/s.National Insurance Co. Ltd.,

(Having issuing Branch Office at Third Floor,
Anuradha Complex, Bangalore Main Road, Krishnagiri)

Having Divisional Office at

No.1, TP Hub, L.R.N.Building, 2nd Floor,

L.R.N.Colony, Saradha College,

Main Road, Salem.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.711 of 2018 dated 06.04.2022, on the file of the Motor Accidents Claims Tribunal, Special District Judge, MCOP Tribunal, Salem.



WEB COPY



C.M.A.No.2043 of 2023

For Appellants : Mr.R.Navaneetha Krishnan

For Respondents : R1 – Exparte

Ms.N.B.Surekha for R2

J U D G M E N T

The claimants have preferred this appeal seeking enhancement of compensation.

2.The appellants/claimants have filed a claim petition stating that on 19.12.2017 at 17.30 hours, when the deceased was riding his two wheeler, the driver of the offending car which was parked on the road took a sudden right in a rash and negligent manner, as a result of which, the deceased dashed against the car and sustained fatal injuries.

3.The first respondent remained exparte before the Tribunal.

4.The second respondent resisted the claim petition stating that the accident took place only due to negligence of the deceased that the deceased did not have valid driving license; that the driver of the offending car did not have valid fitness certificate; and that in any case, the



C.M.A.No.2043 of 2023

WEB COPY

compensation claim made by the appellants/claimants is excessive and prayed for dismissal of the appeal.

5.Before the Tribunal, the first appellant was examined herself as P.W.1 and one Mr.Jagadeesh, eye-witness to the accident was examined as P.W.2 and marked 19 documents as Exhibits P1 to P19. On the side of the second respondent, Ms.Geetha was examined as R.W.1 and 1 document was marked as Exhibit R1.

6.The Tribunal after considering the evidence on record held that the driver of the offending vehicle did not have a valid fitness certificate, directed the second respondent to pay the compensation determined by the Tribunal at the first instance and recover the same from the first respondent. The Tribunal had determined the compensation amount as Rs.14,05,000/-.

7.The learned counsel for the appellants submitted that though the accident took place in the year 2017 and the appellants had established the fact that the deceased was working as a power loom weaver earning Rs.20,000/- per month, the Tribunal fixed a meagre notional income of



C.M.A.No.2043 of 2023

Rs.10,000/- per month including future prospects. He therefore prayed for enhancement of compensation.

WEB COPY

8.Since the first respondent remained ex parte before the Tribunal, the learned counsel for the appellants made an endorsement that notice to the first respondent may be dispensed with. Hence notice to the first respondent is dispensed with.

9.The learned counsel for the second respondent per contra submitted that in the absence of any evidence either to prove the avocation or income of the deceased, the Tribunal was right in fixing the notional income of the deceased at Rs.10,000/- and no interference is called for and prayed for dismissal of the appeal.

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

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



C.M.A.No.2043 of 2023

WEB COPY

12. On perusal of records, it is seen that the accident took place in the year 2017. The appellants have examined P.W.1, the wife of the deceased to show that he was working as a Power loom weaver and was earning Rs.20,000/- per month. However, the appellants have not produced any documents to prove the monthly income earned by the deceased.

13. Considering the year of the accident, the age and avocation of the deceased, and the number of dependents, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.12,000/- per month. Since the deceased is aged 42 years, the appellants would be entitled to 25% enhancement towards future prospects. Therefore, the award under the head loss of income has to be Rs.12,000+3,000 (12,000x25%) x12 x14 x 3/4 = Rs.18,90,000/- The award under the head loss of love and affection is enhanced to Rs.1,20,000/- as the appellants 2 to 4 each would be entitled to Rs.40,000/-. The award of compensation under the head funeral expenses is reduced to Rs.15,000/-. The Tribunal has not awarded any compensation under the head loss of estate and hence, this Court is inclined to grant Rs.15,000/- towards loss of estate. Thus, the award is modified as follows:



C.M.A.No.2043 of 2023

<i>S.No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>	<i>Award amount enhanced or reduced or confirmed</i>
1	Loss of income	12,60,000/-	18,90,000/-	Enhanced
2	Loss of love and affection (20,000 x 4)	80,000/-	1,20,000/- (Rs.40,000 x3)	Enhanced
3	Loss of consortium	40,000/-	40,000/-	Confirmed
4	Funeral expenses	25,000/-	15,000/-	Reduced
5	Loss of estate	-	15,000/-	Granted
	Total	14,05,000/-	20,80,000/-	Enhanced by by Rs.6,75,000/-

14.With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,05,000/- is hereby enhanced to Rs.20,80,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

15.The second respondent is directed to deposit the award amount, now determined by this Court, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of a copy of this judgment. On such deposit, the first appellant would be entitled to Rs.10,00,000/- and the fourth appellant would be entitled to Rs.2,80,000/-,



C.M.A.No.2043 of 2023

the first appellant and fourth appellant 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 2 and 3 each are entitled to Rs.4,00,000/- and the share of the minors 2nd and 3rd appellants are directed to be deposited in any one of the Nationalized Banks till the minor appellants attain majority. However, the first claimant, mother of the minors 2nd and 3rd appellants is permitted to withdraw the accrued interest once in three months. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

12.09.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

pam



WEB COPY



C.M.A.No.2043 of 2023

SUNDER MOHAN, J.

pam

To

- 1.The Motor Accidents Claims Tribunal,
Special District Judge,
MCOP Tribunal,
Salem.
- 2.The Section Officer,
VR Section,
Madras High Court.

C.M.A.No.2043 of 2023

12.09.2023