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C.M.A.No.1887 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 22.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1887 of 2023

1.Gowsalya  
2.Chellammal  
3.Shanmugam

... Appellants

Vs

1.P.Rajamanickam

2.M/s. United India Insurance Co. Ltd.,  
(Having Branch Office at No.14/1-77B, Salem Main Road,  
Puduchampalli Raman Nagar Po, Mettur Dam Salem)  
Having Divisional Office at  
No.1, TP Hub, No.104A, Ranga Building,  
Peramanur Main Road, Near Four Roads,  
Peramanur, Salem.

... Respondents

**Prayer:** Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.04.2022 in M.C.O.P.No.531 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Judge, MCOP Tribunal, Salem.

For Appellants : Mr.R.Navaneetha Krishnan

For Respondents : Mr.J.Chandran, for R2  
R1 – Ex parte



C.M.A.No.1887 of 2023

## **J U D G M E N T**

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This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 11.04.2022 made in M.C.O.P. No.531 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Judge, MCOP Tribunal, Salem.

2. The appellants filed M.C.O.P. No.531 of 2018 on the file of the the Motor Accident Claims Tribunal, Special District Judge, MCOP Tribunal, Salem claiming a sum of Rs.40,00,000/- as compensation for the death of one Selvaraj, who died in the accident that took place on 31.10.2017.

3. According to the appellants, on the date of accident, i.e. 31.10.2017 while the deceased Selvaraj was riding the motorcycle bearing Registration No.TN-30-BZ-8236 proceeding on the Pennagaram – Mecheri main road at Thoppaiyaru Anna Nagar bus stop near Vinayagar temple, the Eicher lorry bearing Registration No.TN.30-BY-8647 which was coming in opposite direction, driven by its driver in a rash and negligent manner and



C.M.A.No.1887 of 2023

hit against the motorcycle and caused the accident; that in the above said accident; the said Selvaraj sustained grievous injuries and died on the spot.

Hence, the appellants filed claim petition claiming compensation against the respondents.

4. The 1<sup>st</sup> respondent remained ex-parte before the Tribunal.

5. The 2<sup>nd</sup> respondent/Insurance Company filed counter denying all the averments made in the claim petition including the involvement of the vehicle stating the the petition is bad for non-joinder of necessary parties; and that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

6. The 1<sup>st</sup> appellant examined herself as PW1 and Mr.Vijayakumar, eye-witness to the accident as PW2 and marked Ex.P.1 to Ex.P.12. One document was marked as Ex.X1. The second respondent had not examined any witness or marked any document.



C.M.A.No.1887 of 2023

7. The Tribunal, considering the evidence and documents filed on the side of the appellants, held that the accident occurred due to the rash and negligent driving by the driver of the first respondent; and directed the respondents jointly and severally to pay a sum of Rs.15,65,000/- as compensation to the appellants.

8. Aggrieved by the said judgment, the appellants have preferred the present appeal seeking enhancement of compensation.

9. The learned counsel for the appellant submitted that the notional income fixed by the Tribunal at Rs.10,000/- is meagre. The Tribunal had also not taken into consideration the future prospects while computing loss of income. Further, the Tribunal ought to have awarded Rs.40,000/- each to the appellants 2 & 3 under the head filial consortium. The learned counsel further submitted that no compensation was awarded under the head loss of estate and hence, prayed for enhancement.

10. Since the first respondent remained ex parte before the Tribunal, the learned counsel for the appellants prayed for dispense with



C.M.A.No.1887 of 2023

notice to him. Hence, notice to the first respondent dispensed with.

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

11. The only question in the instant appeal is-

Whether the compensation awarded by the Tribunal is just and reasonable?

12. The appellants had established that the deceased was working as a Mason through the evidence of PW.1, the wife of the deceased. However, they have not produced any proof of income of the deceased. This Court is of the view that considering the age, avocation and the year of accident, the notional income can be fixed as Rs.12,000/- per month. The deceased who was aged 22 years at the time of accident is entitled to 40% towards future prospects. The multiplier applicable is '18'. Since there are



C.M.A.No.1887 of 2023

three dependants, 1/3<sup>rd</sup> has to be deducted towards his personal expenses.

Thus, the award of compensation under the head loss of income has to be:-

$$12,000+4800(12,000 \times 40\%) \times 12 \times 18 \times 2/3 = \text{Rs.}24,19,200/-$$

The appellants 2 & 3 who are the parents of the deceased are each entitled to Rs.40,000/- under the head filial consortium. Therefore, the compensation under the head loss of love and affection at Rs.60,000(20,000/-x3) is set aside. Rs.25,000/- awarded by the Tribunal towards funeral expenses is reduced to Rs.15,000/-. No amount was awarded towards loss of estate, hence, a sum of Rs.15,000/- is awarded towards loss of estate.

13. Thus, the compensation awarded by the Tribunal is enhanced from Rs.15,65,000/- to Rs.25,29,200/-, 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 income             | 14,40,000/-                     | 24,19,200/-                       | Enhanced                               |
| 2.     | Loss of love and affection | 60,000/-                        | -                                 | Set aside                              |
| 3.     | Loss of consortium         | 40,000/-                        | 40,000/-                          | Confirmed                              |



C.M.A.No.1887 of 2023

|    |                   |                    |                    |                                          |
|----|-------------------|--------------------|--------------------|------------------------------------------|
| 4. | Funeral expenses  | 25,000/-           | 15,000/-           | Reduced                                  |
| 5. | Filial consortium | -                  | 40,000/-           | Awarded                                  |
| 6. | Loss of estate    |                    | 15,000/-           | Awarded                                  |
|    | <b>Total</b>      | <b>15,65,000/-</b> | <b>25,29,200/-</b> | <b>Enhanced<br/>by<br/>Rs.9,64,200/-</b> |

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,65,000/- is hereby enhanced to Rs.25,29,200/- together with interest at 7.5% per annum from the date of petition till the date of deposit. The appellants are not entitled for any interest for the delay period on the amount of Rs.9,64,200/- enhanced by this Court as per the order of this Court dated 01.08.2023, made in C.M.P.No.14810 of 2023 in C.M.A.SR.No.85085 of 2023. The second 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, on the basis of apportionment fixed by the



C.M.A.No.1887 of 2023

Tribunal. The appellants are directed to pay the necessary Court Fee, if any,  
on the enhanced award amount. No costs.

**22.08.2023**

Index: Yes/No  
Neutral Citation: Yes/No  
AT

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



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C.M.A.No.1887 of 2023

**SUNDER MOHAN, J.**

AT

C.M.A.No.1887 of 2023

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