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C.M.A.No.1882 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.1882 of 2023

1.Vetriselvi

2.M.V. Sai Rohit (Minor)

3.M.V. Uthith Mithran (Minor)

[Appellants 2 & 3 are minors rep., by mother and natural guardian]

4. Indirani

5. Perumal

... Appellants

Vs

1.V. Tamilarasan

2.A. Ayyammal

3.M/s. Oriental Insurance Co. Ltd.,

Having Divisional Office at Siva Complex,

2nd Floor, No.22-C, Saradha College Main Road,

Salem – 636 016.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.09.2021 in M.C.O.P.No.894 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 R3

R1 & R2 – Ex parte



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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 09.09.2021 made in M.C.O.P. No.894 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.894 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 Murugan, who died in the accident that took place on 28.03.2018.

3. According to the appellants, on the date of accident, i.e. 28.03.2018 while the deceased Murugan was travelling as a pillion rider in the motorcycle bearing Registration No.TN-29-AA-0644 proceeding on the Mecheri to Thoppur main road, Amaram thittu down, near Pethan Kadu opposite to EB tower, the Tavera car bearing Registration No.TN-33-AF-7234 which was coming in the opposite direction, driven by its driver in a



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rash and negligent manner hit against the motorcycle and caused the accident; that in the above said accident; the said Murugan sustained grievous injuries and died on the way to the hospital. Hence, the appellants filed claim petition claiming compensation against the respondents.

4. The respondents 1 and 2 remained ex-parte before the Tribunal.

5. The third respondent filed a counter statement denying all the averments made by the appellants in the claim petition. According to the third respondent, the rider of the two wheeler was a tort-feasor; drove the same in a rash and negligent manner without valid driving license and insurance coverage at the time of accident; that in any event the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. The 1st appellant examined herself as PW1 and one Sathishkumar, eye-witness to the accident as PW2, and marked Ex.P.1 to Ex.P.15. The respondent had not examined any witness or marked any document.



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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 second respondent and directed the respondents 2 and 3 to pay a sum of Rs.17,01,000/- 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.12,000/- is meagre. The Tribunal had also not taken into consideration the future prospects while computing loss of income. That apart, the Tribunal ought to have awarded Rs.40,000/- each to the appellants 2 & 5 under the head parental consortium and filial consortium respectively. The learned counsel further submitted that no compensation was awarded under the head loss of estate and hence, prayed for enhancement.



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10. Since R1 & R2 remained ex parte before the Tribunal, the learned counsel for the appellants prayed for dispensing with notice to R1 & R2. Hence, notice to R1 and R2 dispensed with.

11. The learned counsel for the third 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.12,000/-. Hence, no interference is called for in the award and prayed for dismissal of the appeal.

12. The only question in the instant appeal is-

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

13. The appellants had established that the deceased was working as a night Security in PACB Bank, Vellar Branch 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 finds that the notional income fixed by the Tribunal at Rs.12,000/- is just and reasonable. The deceased



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who was aged 34 years at the time of accident is entitled to 40% towards future prospects. The multiplier applicable is '16'. Since there are five dependants, 1/4 has to be deducted towards his personal expenses. Thus, the award of compensation under the head loss of income is calculated as follows:-

$$12,000+4800(12,000 \times 40\%) \times 12 \times 16 \times \frac{3}{4} = \text{Rs.}24,19,200/-$$

The appellants 2 to 5 who are the parents and minor sons of the deceased are each entitled to Rs.40,000/- under the head parental consortium and filial consortium respectively. Therefore, the compensation under the head loss of love and affection at Rs.1,00,000/- (20,000/-x5) 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.

14. Thus, the compensation awarded by the Tribunal is enhanced from Rs.17,01,000/- to Rs.26,49,200/-, break-up as follows -



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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	15,36,000/-	24,19,200/-	Enhanced
2.	Loss of love and affection	1,00,000/- (20,000x5)	-	Set aside
3.	Loss of consortium	40,000/-	40,000/-	Confirmed
4.	Funeral expenses	25,000/-	15,000/-	Reduced
5.	Parental consortium	-	80,000/-	Awarded
6.	Filial consortium	-	80,000/-	Awarded
7.	Loss of estate	-	15,000/-	Awarded
	Total	17,01,000/-	26,49,200/-	Enhanced by Rs.9,48,200/-

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,01,000/- is hereby enhanced to Rs.26,49,200/- 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.9,48,200/- enhanced by this Court as per the order of this Court dated 01.08.2023, made in C.M.P.No.14815 of 2023 in C.M.A.SR.No.85135 of 2023. The third respondent / Insurance Company is



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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 Tribunal. The share of the minors / appellants 2 & 3 is directed to be deposited in any one of the Nationalised Bank till the minor appellants attains majority. However, the 1st appellant, mother of the minor appellants 2 & 3 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.

22.08.2023

Index: Yes/No
Neutral Citation: Yes/No
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- 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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SUNDER MOHAN, J.

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