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CMA No. 2104 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2104 of 2023

1.M.Buvaneshwari

2.V.Manimaran

... Appellants

Versus

1.M/s.S.P.K and Co.,
No.1-1-63/7, S.P.K. Complex,
Ananthapuri Nagar 2nd Street,
Madurai Road, Aruppukottai,
Virudhunagar – 626 101.

2.HDFC ERGO General Insurance Com.Ltd.,
No.559, 2nd Floor, Anna Salai,
Chennai – 600 018.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No. 4835 of 2017 dated 03.02.2023 on the file of the Motor Accidents Claims Tribunal, Small Causes Court, Special Sub Court No.2, Chennai.

For Appellants : Mr. K. Varadha Kamaraj.

For Respondents : Mr. S. Arunkumar for R2.

R1 – Dispensed with.



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J U D G M E N T

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The claimants have preferred the instant appeal seeking enhancement of compensation in the award passed by the Tribunal in M.C.O.P. No. 4835 of 2017 dated 03.02.2023.

2.The claimants/appellants have filed the claim petition stating that on 10.07.2017 at about 23.00 hrs, while the deceased was riding his two wheeler in a public road, a lorry belonging to the first respondent and insured with the second respondent was parked in a negligent manner in the public road without any signal, as a result of which, the deceased hit the lorry from behind and sustained fatal injuries.

3.The first respondent remained ex parte before the Tribunal.

4.The second respondent filed a counter stating that the accident took place due to the negligent driving of the deceased; that the driver of the lorry belonging to the first respondent did not have valid license; and that in any case, the compensation claimed was excessive and prayed for dismissal of the appeal.



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WEB COPY 5.The appellants examined PW1 and PW2 and marked Ex.P.1 to Ex.P.12. The second respondent has neither examined any witness nor marked any document.

6.The Tribunal after taking into consideration the oral and documentary evidence held that the accident took place due to the rash and negligent driving of the driver of the lorry insured with the second respondent and directed the second respondent to pay a compensation of Rs.16,09,400/- to the appellants.

7.The learned counsel for the appellants submitted that the compensation awarded by the Tribunal is meagre as the Tribunal had fixed a very low monthly income for the deceased, though the appellants had established that the deceased was working as Plumber and prayed for enhancement.

8.Since the first respondent remained ex parte before the Tribunal, the learned counsel for the appellants sought permission of this Court to dispense with the notice to the first respondent and has made an



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endorsement to that effect. Hence, notice to the first respondent is dispensed with.

9.The learned counsel for the second respondent, per contra, submitted that the compensation awarded by the Tribunal is just and reasonable; and that the award is reasonable and there is no reason to interfere with the said award. The learned counsel further submitted that they have deposited the entire award amount and the appellants had withdrawn the same and hence prayed for dismissal of the appeal.

10.The only question that arises for consideration in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable.

11.On perusal of the records, it is seen that the appellants through the evidence of the first appellant who was examined as PW1 had established that the deceased was working as Plumber. However, no document was filed by the appellants either to prove the avocation or income of the deceased. Considering the age, avocation of the deceased and the year of the accident, this Court is of the view that it would be just



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and reasonable to fix Rs.13,000/- per month as notional income for the deceased. Since the deceased was aged 27 years at the time of the accident, the appellants are entitled to 40% enhancement towards future prospects and the multiplier applicable is 17. Since the deceased died as bachelor, 50% has to be deducted towards personal expenses. Therefore, the loss of income would be Rs.13,000 + 5,200 (40% of Rs.13,000) = Rs.18,200 X 12 X 17 X ½ = Rs.18,56,400/-. The award under the other heads are just and the same are confirmed. Thus, the award of the Tribunal is modified as follows;

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	14,99,400	18,56,400	Enhanced
2.	Loss of Consortium	80,000	80,000	Confirmed
3.	Loss of Estate	15,000	15,000	Confirmed
4.	Funeral Expenses	15,000	15,000	Confirmed
	Total	16,09,400	19,66,400	Enhanced by Rs.3,57,000/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,09,400/- is hereby enhanced to Rs.19,66,400/- together with



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interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The second respondent 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 respective share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn as per the apportionment fixed by the Tribunal. The appellants are directed to pay the necessary Court fee if any on the enhanced award amount. No costs.

25.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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1. The Motor Accidents Claims Tribunal /
Small Causes Court,
Special Sub Court No.2,
Chennai.
2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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