



C.M.A.No.2110 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.2110 of 2023

1.Mrs.Vachala

2.Mr.Elangovan

... Appellants

Vs.

1.Mrs.Mallikunnissa

(Since R1 remained exparte before the
Tribunal, her presence may be dispensed with)

2.United India Insurance Company Limited,
No.43/397-A, Annai Indira, Gandhi Nagar,
Rajajipuram, Tiruvallur.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.09.2021 made in M.A.C.T.O.P.No.110 of 2021 on the file of the Motor Accident Claims Tribunal, Special District Court to deal with Motor Accident Claims Tribunal No.1, Tiruvallur.

For Appellants : Ms.A.Subadra

For Respondents : R1 – dispensed with
Mr.Sankara Narayanan for R2



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J U D G M E N T

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The claimants are the appellants before this Court seeking enhancement of compensation.

2.The appellants had filed a claim petition stating that on 05.05.2021 at about 2.15 P.M., when the deceased was riding his motorcycle, the driver of the bus belonging to the first respondent herein drove the same in a rash and negligent manner, hit the motor cycle of the deceased, as a result of which, the deceased sustained fatal injuries.

3.The first respondent remained ex-parte before the Trial Court.

4.The second respondent filed a counter stating that the accident took place only due to the negligence of the deceased and that in any case, the claim made by the appellants is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellants examined 2 witnesses as P.W.1 and P.W.2 and marked 18 documents as Exhibits P.1 to P.18. On the side of the second respondent, 2 witnesses were examined as R.W.1 and



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6.The Trial Court after considering the evidence on record, held that the accident took place due to the negligence of the driver of the offending vehicle insured with the second respondent and directed the second respondent to pay a compensation of Rs.16,25,000/- to the appellants at the first instance and recover the same from the 1st respondent owner of the vehicle.

7.The learned counsel for the appellants submitted that the award of the Tribunal is meagre and a low monthly notional income of Rs.10,000/- was fixed for the deceased, though the appellants had established that the deceased was employed and was earning Rs.20,000/- per month and prayed for enhancement of compensation.

8.Since the first respondent remained exparte 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 second respondent per contra submitted



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that though the appellants claimed that the deceased was working in an Egg shop, no documents were filed either to prove the avocation or income of the deceased. Hence, the Tribunal was right in fixing the notional income of Rs.10,000/- per month and no interference is called for and prayed for dismissal of the appeal.

10.Heard the learned counsel for the appellants as well as the 2nd 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?.

12.On perusal of records, this Court finds that P.W.1, the father of the deceased had stated that the deceased was working in an Egg Shop and was earning Rs.25,000/- per month. However, the appellants have not produced any documents to prove the exact income earned by the deceased. The deceased was aged 21 years.

13.Considering the age of the deceased, his avocation, the number of



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the dependants and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income of Rs.14,000/- per month. Thus, the compensation under the head loss of dependency has to be Rs.14,000 + 5,600 40% of Rs.14,000 X 12 X 18 X 50%=Rs.21,16,800/-.

The award under the other heads are confirmed. Thus, the award is modified as follows:

<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 dependency	15,12,000/-	21,16,800/-	Enhanced
2	Loss of estate	16,500/-	16,500/-	Confirmed
3	Loss of consortium Rs.40,000x2	80,000/-	80,000/-	Confirmed
4	Funeral expenses	16,500/-	16,500/-	Confirmed
	Total	16,25,000/-	22,29,800/-	Enhanced by by Rs.6,04,800/-

14.With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,25,000/- is hereby enhanced to Rs.22,29,800/- together with 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, less the amount



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already deposited, if any, within a period of six (6) weeks from the date of a receipt of a copy of this judgment at the first instance and recover the same from the first respondent/owner of the vehicle. On such deposit, the appellants are permitted to withdraw their share of the award amount, less the amount if any, already withdrawn along with proportionate interest and costs 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.

12.09.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

pam/gvn



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To

- 1.The Motor Accident Claims Tribunal,
Special District Court to deal with
Motor Accident Claims Tribunal No.1,
Tiruvallur.
- 2.The Section Officer,
VR Section,
Madras High Court.



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SUNDER MOHAN, J.

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