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C.M.A.No.2141 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.2141 of 2023

1.Nandhini
2.Minor Sanjai
3.Minor Saranya
4.Minor Jagan
(Minor appellants 2 to 4 are represented
by their next friend mother Nandhini)
5.Perumal
6.Chinnapapa

... Appellants

Versus

1.C.Arumugam
2.K.Satheesh @ Sathish
3.The Shriram General Insurance Co. Ltd.,
E-8, EPIP, RIICO Industrial Area,
Sitapura, Jaipura, Rajasthan.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 15.12.2016 and made in M.C.O.P.No.619 of 2015 on the file of the Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.

For Appellants : Mr.S.P.Yuvaraj

For R3 : Mr.R.Sreevidhya



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JUDGMENT

The claimants have preferred the above appeal seeking enhancement of compensation.

2.The appellants had filed the claim petition stating that on 23.10.2014 at about 19.00 hrs, while the deceased was proceeding in his bike, the car, insured with the 3rd respondent came in a rash and negligent manner, dashed against the deceased; that as a result of which, the deceased sustained fatal injuries and thus, the appellants are entitled for compensation.

3.The respondents 1 and 2 – owner and driver of the car remained *ex-parte* before the Tribunal.

4.The 3rd respondent filed a counter denying the averments made in the claim petition stating that the accident took place only due to the negligence of the deceased; that in any case, the compensation claimed was excessive and hence prayed for dismissal of the claim petition.



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5.Before the Tribunal, the appellants examined P.W.1 and P.W.2 and marked Exs.P1 to P8. The 3rd respondent 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 negligent act of the driver of the offending vehicle and directed the 3rd respondent to pay the compensation of Rs.34,74,000/-.

7.The learned counsel for the appellants submitted that the deceased established the fact that he was working as a driver in the Highways Department and was earning Rs.21,000/- as monthly income. The Tribunal accepted Ex.P7-salary certificate and had erroneously rejected the claim for future prospects. That apart, the Tribunal had not awarded compensation under the head loss of estate and had awarded only a compensation of Rs.2,25,000/- under the heads loss of consortium and loss of love and affection, though the appellants are entitled to Rs.2,40,000/- under those two heads.



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8.Since the respondents 1 and 2 remained *ex-parte* before the Tribunal, the learned counsel for the appellants sought permission of this Court to dispense with notice to the respondents 1 and 2 and he had also made an endorsement to that effect. Hence, notice to the respondents 1 and 2 is dispensed with.

9.The learned counsel for the 3rd respondent per contra submitted that the award of the Tribunal is just and reasonable and hence no interference is called for and thus, prayed for dismissal of the appeal.

10.The only question involved 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 had marked Ex.P7-salary certificate of the deceased, which shows that he was earning a sum of Rs.21,035/- per month and was working as a lorry driver in the Highways Department, Government of Tamil Nadu. The Tribunal accepted the same and fixed the monthly income at Rs.21,000/-. However, the Tribunal held that the appellants are not entitled to any enhancement towards future prospects since the appellant had not



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established that he was a permanent employee of the Highways Department and had observed that the deceased was only a probationer since 1997. This Court is of the view that the Tribunal's finding in this regard is erroneous. Even assuming that the deceased was not a permanent employee, compensation has to be computed by taking into consideration the future prospects. Since he was aged 32 years, the appellants are entitled to 40% enhancement towards future prospects. The multiplier applicable is 16. After deduction 1/4th towards personal expenses, the compensation under the head loss of dependancy has to be as follows:

$$\text{Rs.21,000/-} \quad (\text{Rs.21,000} + 8,400) \times 12 \times 16 \times \frac{3}{4} = \\ \text{Rs.42,33,600/-}$$

The compensation awarded by the Tribunal under the heads loss of love and affection and loss of consortium is not in accordance with law laid down by the Hon'ble Apex Court and hence, the same are modified. The 1st respondent is entitled to Rs.40,000/- towards loss of consortium. The appellants 2 to 4 are each entitled to a sum of Rs.40,000/- towards loss of love and affection and the appellants 5 and 6 are each entitled to Rs.40,000/- towards filial consortium. The amount awarded by the Tribunal towards funeral expenses is on the higher side and hence, the



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same is reduced to Rs.15,000/-. The Tribunal had not awarded any compensation under the head loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. Thus, the award 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 dependancy	30,24,000	42,33,600	Enhanced
2.	Loss of Love and Affection to the appellants 2 to 4	1,25,000	1,20,000	Reduced
3.	Loss of Consortium to the 1 st appellant	1,00,000	40,000	Reduced
4.	Funeral Expenses	25,000	15,000	Reduced
5.	Loss of Filial consortium to the appellants 5 & 6	-	80,000	Granted
4.	Loss of Estate	-	15,000	Granted
	Total	32,74,000	45,03,600	Enhanced by Rs.12,29,600/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.32,74,000/- is hereby enhanced to Rs.45,03,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd respondent/Insurance Company is directed to



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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 receipt of a copy of this Judgment. On such deposit, the appellants 1 , 5 and 6 are permitted to withdraw their respective share of the award amount, as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor appellants 2 to 4 are directed to be deposited in any one of the Nationalised Bank, till the minors attain majority. The 1st appellant-mother of the appellants 2 to 4 is permitted to withdraw the accrued interest once in three months. The appellants are not entitled to interest for the delay period of 1096 days as per the order of this Court dated 25.08.2023 in C.M.P.No.16621 of 2021 in C.M.A.Sr.No.87665 of 2021. The appellants are directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

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rst/dpa

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

SUNDER MOHAN, J.



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To:

- 1.The Additional District Court,
The Motor Accident Claims Tribunal,
Krishnagiri.
- 2.The Section Officer,
VR Section,
High Court, Madras.

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