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CMA No. 2299 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2299 of 2023

1.Ramila

2.Minor Muhilan

3.Minor Mugilarasu

4.Minor Dhanusiya

(Minors rep., by Natural guardian/
mother/Ramila)

5.Thangaponnu

... Appellants

Versus

1. Tamilarasan

2.A.Ayyammal

3.The Oriental Insurance Co.Ltd.,
Siva Complex, II-Floor,
No.22C, Saradha College Main Road,
Salem – 636 016.

(The Respondents-1 & 2 are set remained ex-parte
before the Tribunal. Hence notice may be dispense
with for R-1 & 2 in this appeal)

... 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. 97 of 2019 dated 21.10.2021 on the file of the MACT / I –



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Additional District cum Sessions Court, Salem.

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For Appellants : Mr. M. Lokesh.

For Respondents : Mr. Elveera ravindran for R3.

R1 & R2 – Ex parte.

J U D G M E N T

The claimants have preferred the instant appeal seeking enhancement of compensation in the award passed by the Tribunal in M.C.O.P. No. 97 of 2019 dated 21.10.2021.

2.The claimants/appellants have filed the claim petition stating that on 28.03.2018 at about 12.30 p.m., while the deceased was riding his motorcycle in a public road, the car belonging to the first and second respondents and insured with the third respondent came in a rash and negligent manner and dashed against the vehicle of the deceased as a result of which the deceased sustained fatal injuries.

3.The first and second respondents remained ex parte before the Tribunal.



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4.The third respondent filed counter stating that the accident took place only due to the negligence of the deceased; and that in any case, the compensation claimed was excessive and prayed for dismissal of the appeal.

5.The appellants examined PW1 and marked Ex.P.1 to Ex.P.26. The third 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 negligence of the driver of the car insured with the third respondent and directed the third respondent to pay a compensation of Rs.26,01,340/- to the appellants.

7.The learned counsel for the appellants submitted that though the appellants had examined PW1 to show that the deceased was running a concern by name 'Magizhan Traders' which was doing the business of selling sand and bricks for construction purposes, the Tribunal had fixed a meagre notional income of Rs.15,000/- per month; that the Tribunal



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had erroneously considered only 25% enhancement towards future prospects; and that the compensation under the head Loss of love and affection was meagre and prayed for enhancement of compensation.

8. Notice to the first and second respondents has been dispensed with by order of this Court dated 14.09.2023.

9. The learned counsel for the third respondent, per contra, submitted that though documents were filed to prove the avocation of the deceased, no document was filed to prove the income of the deceased. Therefore, the Tribunal was right in fixing the notional income at Rs.15,000/- and hence, the learned counsel 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 deceased was aged



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36 years at the time of the accident. Ex.P.11 to Ex.P.18 shows that he was running a concern by name 'Magizhan Traders'. Ex.P.18 is the rental agreement entered into between the deceased and the land lord of the premises. All these documents would show that the appellant was doing the business of selling sand and bricks for construction purposes. However, there is no document to show the exact income earned by the deceased. Considering the aforesaid documents, age of the deceased and the year of the accident, this Court is of the view that it would be reasonable to fix Rs.18,000/- per month as notional income. Since the deceased was aged 36 years at the time of the accident, the appellants are entitled to 40% enhancement towards future prospects and the multiplier applicable is 15. Since there are four dependents, $\frac{1}{4}^{\text{th}}$ has been deducted towards personal expenses. Therefore, the compensation under the head Loss of income would be $\text{Rs.18,000} + 7,200(40\% \text{ of Rs.18,000}) = \text{Rs.25,200/-} \times 12 \times 15 \times \frac{3}{4} = \text{Rs.34,02,000/-}$. The Tribunal had granted only a sum of Rs.40,000/- under the head Loss of love and affection. However, the appellants 2 to 5 are each entitled to Rs.40,000/- under the said head. Hence, the same is enhanced to Rs.1,60,000/- and the first appellant is entitled to Rs.40,000/- under the head Loss of consortium. 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 income	25,31,340	34,02,000	Enhanced
2.	Loss of Love and Affection	40,000	1,60,000	Enhanced
3.	Loss of consortium	---	40,000	Granted
4.	Funeral Expenses	15,000	15,000	Confirmed
5.	Loss of Estate	15,000	15,000	Confirmed
	Total	26,01,340	36,32,000	Enhanced by Rs.10,30,660/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.26,01,340/- is hereby enhanced to Rs.36,32,000/- 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 third respondent is directed to deposit the award amount now determined by this Court along with proportionate 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 first appellant is permitted to



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withdraw Rs.8,45,500/- and the fifth appellant is permitted to withdraw Rs.2,50,000/- along with proportionate interest and costs, less the amount if any, already withdrawn. The shares of the minor appellants 2 to 4 of Rs.8,45,500/- each are directed to be deposited in the interest bearing Fixed Deposit in any of the Nationalized Bank till they attain majority and the first appellant is permitted to withdraw the accrued interest once in every six months. The appellants are directed to pay the necessary Court fee if any on the enhanced award amount. No costs.

27.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

SUNDER MOHAN, J



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To

- 1.The MACT / I – Additional District cum Sessions Court,
Salem.
- 2.The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.

C.M.A. No. 2299 of 2023

Dated: 27.09.2023