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C.M.A.No.2153 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.2153 of 2023

1.Thilagavathi
2.Murugan
3.Swetha

Appellants

Vs

1.M.Anandha babu

2.M/s Magma HDI General Insurance Co.Ltd,
(Having Branch Office at No.454/4, Ram Complex,
Chinnery Vavalkadu, Near New Bus Stand West,
Pallapatty, Salem.

3.T.Gopal

Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree in M.C.O.P.No.669 of 2021 dated 01.02.2023 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

For appellants : Mr.R.Navaneetha Krishnan

For R2 : Ms.R.Sree Vidhya



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C.M.A.No.2153 of 2023

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 01.02.2023, made in M.C.O.P. No.669 of 2021 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

2. The appellants filed M.C.O.P. No.669 of 2021 on the file of the Motor Accident Claims Tribunal Special District Judge, Krishnagiri claiming a sum of Rs.50,00,000/- as compensation for the death of one Sukilash, who died in the accident that took place on 20.09.2020.

3. According to the appellants, on 20.09.2020 at about 9.30 hours, when the deceased was riding his two wheeler bearing registration No. TN 93 A 3099 in a public road, the TATA ACE Tempo bearing registration No. TN 93 A 7255 belonging to the first respondent insured with the second respondent herein, came in a rash and negligent manner and hit the two wheeler of the deceased; and as a result, the deceased sustained fatal injuries.



C.M.A.No.2153 of 2023

4. The first respondent, who is the owner of the Tata Ace, remained ex-parte before the Tribunal.

5.The second respondent filed a counter stating that the tempo driver did not have a valid driving license and violated the policy conditions; therefore, they are not liable to pay any compensation; the accident took place only due to the negligence of the deceased and the deceased did not wear helmet at the time of the accident; and that in any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, on the side of the appellants, the first appellant examined herself as P.W.1 and marked 18 documents as Exs.P1 to P.18. The second respondent examined two witnesses as R.W1 and R.W.2 and did not mark any documents. Four Court documents were marked as Exs.X1 to X4.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Tata Ace belonging to the first respondent



C.M.A.No.2153 of 2023

and directed the second respondent being insurer of the vehicle to pay the compensation of Rs.11,65,000/- to the appellants at the first instance and recover the same from the first respondent owner of the offending vehicle, for violation of policy conditions.

8.The learned counsel for the appellants submitted that the deceased was working as a construction supervisor in a construction company, at the time of the accident. However, the Tribunal had fixed a meagre notional income of Rs.10,000/- including future prospectus, which requires to be enhanced. The Tribunal has also awarded a meagre amount towards loss of love and affection and prayed for enhancement of the same.

9. The first respondent remained ex parte before the Tribunal and hence, the learned counsel for the appellants submitted that notice to the first respondent may be dispensed with and made an endorsement to that effect. Hence, notice to R1 is dispensed with. The learned counsel further submitted that the third respondent is not a necessary party and hence, notice may be dispensed with for the third respondent.



C.M.A.No.2153 of 2023

10. Per contra, the learned counsel for the second respondent submitted that though the appellants claimed that the deceased was working as a construction supervisor, no document was filed either to prove the income or avocation of the deceased. In such circumstances, the Tribunal was right in fixing the notional income of the deceased at Rs.10,000/- per month and prayed for dismissal of the appeal.

11. The only question involved in the instant appeal is:

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

12. The appellants had established that the deceased was working as a construction supervisor in SKS Construction, Mettur, through the evidence of PW.1, the mother of the deceased. However, they have not produced any document to prove the avocation and income of the deceased at the time of accident. Considering the age of the deceased, his avocation and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional monthly income as Rs.14,000/-. As per the judgment of the Hon'ble Apex Court reported in **2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay**



C.M.A.No.2153 of 2023

Sethi), the appellant would be entitled to 40% enhancement towards future prospects. The deceased was a bachelor at the time of accident and therefore, the Tribunal deducted 50% towards personal expenses, which is proper. By applying multiplier '18', the compensation awarded by the Tribunal towards loss of income is modified as follows:

$$\text{Rs.14,000/-} + 5,600/- [\text{Rs.14,000/-} \times 40\%] \times 12 \times 18 \times \frac{1}{2} = \text{Rs.21,16,800/-}.$$

13. The appellants are each entitled for an amount of Rs.44,000/- towards loss of love and affection. Therefore, Rs.1,32,000/- is awarded under the said head. The compensation awarded by the Tribunal under the head funeral expenses at Rs.25,000/- is excessive and the same is hereby reduced to Rs.16,500/-. The Tribunal has not awarded any amount towards loss of estate and hence, a sum of Rs.16,500/- is hereby awarded towards loss of estate. Thus, the compensation awarded by the Tribunal is modified as follows:



C.M.A.No.2153 of 2023

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	10,80,000/-	21,16,800/-	Enhanced
2.	Loss of estate	-	16,500/-	Granted
3.	Loss of love and affection	60,000/-	1,32,000/- (44,000x3)	Enhanced
4.	Funeral expenses	25,000/-	16,500/-	Reduced
	Total	11,65,000/-	22,81,800/-	Enhanced by Rs.11,16,800/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,65,000/- is hereby enhanced to Rs.22,81,800/- 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 / Insurance Company 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 at the first instance and recover the same from the first respondent. On such deposit, the third appellant is permitted to withdraw a sum of Rs.3,00,000/- of the award amount and



C.M.A.No.2153 of 2023

the appellants 1 and 2 are permitted to withdraw the remaining amount equally along with proportionate interest and costs, less the amount if any, already withdrawn. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

21.09.2023

vkr/vca

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The Motor Vehicle Accident Tribunal,
Special District Judge, Salem.

2.The Section Officer,
VR Section,
High Court, Madras.



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C.M.A.No.2153 of 2023

SUNDER MOHAN, J.

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C.M.A.No.2153 of 2023

21.09.2023