



C.M.A.No.1876 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1876 of 2022

1.Pachaiyammal
2.Sathishkumar
3.Chandira
4.Shanthi

Appellants

Vs

1.Sabarinathan
2.United India Insurance Company Limited,
Divisional Office, Aurobindo Road,
Block 19, Neyveli -3.

Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the fair and decretal award passed by the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam (Motor Accident Claims Tribunal) dated 21.03.2022 in MCOP.No.294 of 2020.

For appellants : Mr.S.Udhayakumar
For R2 : Mr.J.Micheal Visuvasam



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 21.03.2022, made in M.C.O.P.No.294 of 2020 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, Cuddalore at Vridhachalam.

2. The appellants filed M.C.O.P. No.294 of 2020 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, Cuddalore at Vridhachalam claiming a sum of Rs.20,00,000/- as compensation for the death of one Poomalai, who died in the accident that took place on 12.11.2020.

3. According to the appellants, on 12.11.2020 at about 6.45 p.m., when the deceased was walking on a public road, the first respondent/ rider of the two wheeler bearing registration No.TN 81 EZ 3790, insured with the second respondent, came in a rash and negligent manner and hit the deceased; and as a result, the deceased sustained fatal injuries.



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

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

6.Before the Tribunal, the second appellant examined himself as P.W.1 and marked 10 documents as Exs.P1 to P.10. The second respondent/Insurance did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the first respondent and directed the second respondent being insurer of the two wheeler to pay a sum of Rs.3,25,000/- as compensation to the appellants.

8.The learned counsel for the appellants submitted that the Tribunal has not awarded any compensation towards love and affection



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for the appellants 2 to 4, who are the children of the deceased and the notional income fixed by the Tribunal is also very meagre. Hence, he prayed for enhancement of compensation.

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. Hence, notice to R1 is dispensed with.

10. Per contra, the learned counsel for the second respondent submitted that the deceased was aged 78 years and there is no proof to show that he had any avocation and earning, at the time of accident. The appellants 2 to 4 are not the dependents of the deceased and the deduction of 1/4th towards personal expenses is erroneous and as such, the compensation is excessive 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?



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12. On perusal of the records, it is seen that the deceased was aged 78 years at the time of accident. The appellants had established that the deceased was working as a helper, through the evidence of PW.1, the son 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, the Tribunal has fixed his notional income as Rs.6,000/- per month. Since the deceased was 78 years, the notional income cannot be fixed in the same manner as it is fixed for any other able bodied adults. At the same time, this Court is of the view that it would be just and reasonable to fix the notional income of the deceased at Rs.9,000/- per month. It is seen that the appellants 2 to 4 cannot be treated as dependents. However, the first appellant was a dependent of the deceased. Therefore, this Court is of the view that it would be just and reasonable to deduct 1/3rd of his income towards the personal expenses of the deceased. Hence, the compensation awarded by the Tribunal towards loss of income is modified as follows:

$$\text{Rs.9,000/-} \times 12 \times 5 \times \frac{2}{3} = \text{Rs.3,60,000/-}$$

13. The first appellant is entitled to loss of consortium at Rs.44,000/-. The appellants 2 to 4 are each entitled for an amount of



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Rs.44,000/- towards loss of love and affection. Therefore, Rs.1,32,000/-

is awarded under the said head. 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. The compensation awarded under the head funeral expenses is enhanced to Rs.16,500/- [10% enhancement is granted on the conventional heads as per the decision of the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd., Vs. Pranay Sethi and others** reported in **2017 (2) TN MAC 609 (SC)**]. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	2,70,000/-	3,60,000/-	Enhanced
2.	Loss of estate	-	16,500/-	Granted
3.	Loss of consortium	-	44,000/-	Granted
4.	Loss of love and affection to the appellants 2 to 4	40,000/-	1,32,000/- (44,000x3)	Enhanced
5.	Funeral expenses	15,000/-	16,500/-	Reduced
	Total	3,25,000/-	5,69,000/-	Enhanced by Rs.2,44,000/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at



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Rs.3,25,000/- is hereby enhanced to Rs.5,69,000/- 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 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. On such deposit, the appellants 2 to 4 are each permitted to withdraw a sum of Rs.50,000/- of the award amount and the first appellant is permitted to withdraw the remaining amount 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.

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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 Motor Vehicle Accident Tribunal,
III Additional District and Sessions Judge,
Cuddalore at Vridhachalam.
- 2.The Section Officer,
VR Section, High Court, Madras.

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