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C.M.A.No.590 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.590 of 2022

1.Baby
2.Samraj
3.Samakkal

... Appellants

Vs

1.J.Valarmathi

2.The Branch Manager,
Shriram General Insurance Company Ltd.,
10003-E-8,
RIICO Industrial Area, Sitapura,
Jaipur, Rajasthan – 302 022.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 01.04.2016 in M.C.O.P.No.32/2013 on the file of Principal District Judge, Krishnagiri.

For Appellants : Mr.Mukund R. Pandiyan

For Respondents : Mr.K.Poomalai, for R2
No Appearance for R1



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 01.04.2016 made in M.C.O.P. No.32 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri.

2. The appellants filed M.C.O.P. No.32 of 2013 on the file of the the Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri claiming a sum of Rs.15,00,000/- as compensation for the death of one Nataraj, who died in the accident that took place on 12.12.2012.

3. According to the appellants, on 12.12.2012 at about 05.00 pm, while the deceased Nataraj was standing on the side of the road to go to his house at Soolaimalai, the driver of the Medium Goods Vehicle bearing Registration No.TN-24-8638 belonging to the first respondent, drove the same in a rash and negligent manner, came from Krishnagiri side towards Thiruvannamalai, hit against the said Nataraj and caused the accident. Due to the impact, the said Nataraj sustained head injury and died on the spot.



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Hence, the appellants filed claim petition claiming compensation against the respondents.

4. The first respondent remained *ex-parte* before the Tribunal.

5. The second respondent filed a counter statement denying all the averments made by the appellants in the claim petition. According to the second respondent, the deceased Natraj who was walking on the left side of the road, suddenly crossed the road without noticing the oncoming lorry, came in front of the lorry and invited the accident; and that the driver of the first respondent did not possess any driving license; that the second respondent is not liable to pay compensation to the appellants; and that in any event the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. The 1st appellant examined herself as PW1 and Elangovan, eye-witness to the accident was examined as PW2. Three documents were marked as Ex.P.1 to Ex.P.3. Neither documents were marked nor witnesses were examined on the side of the second respondent.



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7. The Tribunal after considering the evidence and documents filed on the side of the appellants, held that the accident occurred due to rash and negligent driving by the driver of the first respondent and directed the respondents jointly or severally to pay a sum of Rs.7,75,000/- as compensation to the appellants.

8. Aggrieved by the said order, the appellants have preferred the present appeal seeking enhancement of compensation.

9. The learned counsel for the appellants submitted that the award of compensation is meagre. The Tribunal had taken only Rs.7,500/- as monthly income including future prospects. The accident took place in the year 2012 and the appellants have established through PW.1 that the deceased had a poultry farm and was earning more than Rs.15,000/- per month at the time of accident. The learned counsel further submitted that the Tribunal had awarded only Rs.1 lakh towards loss of love and affection whereas the three appellants are entitled to each Rs.40,000/- and prayed for enhancement of compensation.



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10. Though notice has been served on the first respondent and his name is printed in the cause list, none appeared for him.

11. The learned counsel for the second respondent per contra submitted that the award of the Tribunal is just and reasonable. In the absence of any evidence to show the income of the deceased, the Tribunal had taken Rs.7,500/- per month which need not be interfered with. Therefore, prayed for dismissal of the appeal.

12. The short point involved in the instant appeal is-

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

13. On perusal of the records, this Court finds that the appellants have established that the deceased had a poultry farm. Though they have claimed that he was earning Rs.15,000/- per month, no proof was filed to establish the same. In the absence of any proof of income, the Tribunal was right in fixing the notional income. However, the notional income fixed by



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the Tribunal is meagre. The accident took place in the year 2012.

Considering the age of the deceased, the fact that he was running a poultry farm and the cost inflation index, this Court is of the view that it would be just and reasonable to fix Rs.9,000/- per month as notional income for the deceased. It is seen that the age of the deceased as per the legal heir certificate is 51 years. Therefore, the multiplier applicable is 11. The appellants are entitled to 25% towards future prospects. The deceased was survived by his wife and children. Hence, 1/3rd has to be deducted towards his personal expenses. Thus, the compensation under the head loss of earning is calculated as follows:- Rs.9,000/-+2,250/- (9,000x25%)x12x11x2/3 =Rs.9,90,000/-. The appellants are also entitled to Rs.1,20,000/- under the head loss of love and affection instead of Rs.1,00,000/-. The compensation awarded by the Tribunal under other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.7,75,000/- to Rs.11,20,000/-, break-up as follows -



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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Funeral expenses	10,000/-	10,000/-	Confirmed
2.	Loss of love and affection and loss of consortium	1,00,000/-	1,20,000/- (Rs.40,000x3)	Enhanced
3.	Loss of earning	6,65,000/-	9,90,000/-	Enhanced
	Total	7,75,000/-	11,20,000/-	Enhanced by Rs.3,45,000/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,75,000/- is hereby enhanced to Rs.11,20,000/- together with interest at 8% 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 are permitted to withdraw their share of the award amount along with proportionate interest and costs, less the amount if



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any, already withdrawn, on the basis of apportionment fixed by the Tribunal. 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
Neutral Citation: Yes/No
AT

To

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



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SUNDER MOHAN, J.

AT

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