



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1607 of 2023

1.Sivasakthi
2.Vidhyakala
3.Prabakaran

... Appellants

Vs.

1.Muthu

2.Reliance General Insurance Co., Ltd.,
No.6, 4th Floor, (Reliance House),
Haddose Road, (Dose Road),
Nungambakkam,
Chennai - 600 006.

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.01.2023 in MCOP.No.35 of 2022 on the file of the Motor Accident Claims Tribunal, III - Additional District & Sessions Court Cuddalore Cum Vriddhachalam, Cuddalore District.



WEB COPY



For Appellants : Mr.T.Meganathan

For Respondents : Mr.G.Sukumar for R2
No appearance for R1

J U D G M E N T

The claimants have preferred this instant appeal seeking for enhancement of the compensation awarded by the Tribunal.

2. The appellants have filed the claim petition stating that on 20.12.2021 at about 7.30 a.m. while the deceased was walking on the road, the offending vehicle/two wheeler, insured with the second respondent/Insurance Company herein, came in a rash and negligent manner and hit the deceased, as a result of which the deceased sustained fatal injuries.

3. The first respondent, the owner of the offending vehicle, filed a counter stating that the accident took place only due to the negligence of the deceased and that the first respondent's vehicle is insured with the second



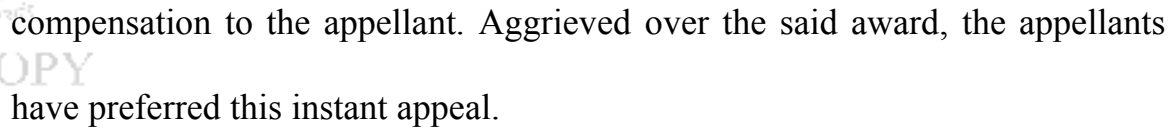
WEB COPY

respondent/Insurance Company and hence, the first respondent is not liable to pay the compensation.

4. The second respondent/Insurance Company filed a counter stating that the accident took place only due to the negligent act of the deceased; and that in any case, the compensation claimed by the Tribunal is excessive and prayed for dismissal of the claim petition.

5. The appellants examined P.W.1 and P.W.2 and marked 10 documents as Exs.P.1 to P10. The first respondent, the owner of the offending vehicle, examined himself as R.W.1 and did not mark any documents. On the side of the second respondent/Insurance Company neither oral nor documentary evidence was adduced.

6. The Tribunal, after considering the pleadings, oral and documentary evidence held that the accident occurred only due to the rash and negligent act of the rider of the two wheeler and directed the second respondent being the insurer of the offending vehicle to pay a sum of Rs.5,59,000/- as



8. Though the first respondent was served with a notice and a learned counsel has entered appearance, there is no representation on behalf of the first respondent today before this Court.

4/9



WEB COPY

appellants had neither proved the avocation nor the income of the deceased and hence, submitted that the Tribunal was right in fixing the notional income of the deceased and prayed for dismissal of the appeal.

10. The only question involved in this instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

11. On perusal of the records, it is seen that P.W.1, the wife of the deceased was examined to show that the deceased was running a Pork Stall. However, no documents have been filed to prove the income or the avocation of the deceased. Considering the year of the accident and the number of dependents, this court is of the view that it would be just and reasonable to fix the monthly notional income as Rs.17,000/-. The deceased was aged about 60 years at the time of the accident. Therefore, the appellants are entitled to 10% enhancement towards future prospects. Thus the compensation under the head “Loss of income” has to be at Rs.17,000/-



WEB COPY

+1,700/- (10% future prospects) = Rs.18,700/- x 12 x 7 = Rs.15,70,800/-.

On perusal of the award, it is seen that the Tribunal has not awarded compensation under the head "Loss of estate", and "Transport charges". Hence, the same is granted as Rs.15,000/- and Rs.5,000/- respectively. The tribunal has awarded loss of consortium at Rs.40,000/-. However, the appellants 2 and 3 are also entitled to Rs.40,000/- each under the head "loss of love and affection". Hence the same is awarded.

12. Thus, the compensation awarded by 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 or reduced
1.	Loss of income	5,04,000	15,70,800	Enhanced
2	Loss of consortium for the first appellant	40,000	40,000	Confirmed
3.	Loss of love and affection	---	80,000	Granted



WEB COPY

	to appellant 2 & 3			
4	Funeral expenses	15,000	15,000	Granted
5.	Loss of estate	---	15,000	Granted
6.	Transportation charges	---	5,000	Granted
	Total	Rs.5,59,000/-	Rs.17,25,800/-	Enhanced by Rs.11,66,800/-

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,59,000/- is hereby enhanced to Rs.17,25,800/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to



WEB COPY

withdraw the award amount along with interest and costs, after adjusting the amount if any, already withdrawn as per the apportionment fixed by the Tribunal. No costs.

14.09.2023

Index: Yes/No

Internet: Yes/No

Speaking order: Yes/ No

gba

To

1.The Additional District &
Sessions Court Cuddalore Cum Vriddhachalam-III ,
Motor Accident Claims Tribunal,
Cuddalore District.

2.The Section Officer
VR Section
High Court of Madras, Chennai – 600 104.

8/9



WEB COPY



SUNDER MOHAN,J.

gba

C.M.A.No.1607 of 2023

14.09.2023