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CMA No. 1722 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1722 of 2023

1. P.Maheswari

2. Minor J.Saravanel

3. Minor J.Keerthivel

(Minor Petitioners rep. by mother) guarding NF P.Maheswari

(the first petitioner herein)

... Appellants

Versus

1. K.S.Kathiravan

2. The Manager,

Cholamandalam MS Gen Insurance Co., Ltd.,

II Floor, Shaw Wallace Street,

154, Thambu Chetty Street,

Parry's Corner,

Chennai – 600 001.

... 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. 43 of 2019 dated 11.01.2023 on the file of the Motor Accident Claims Tribunal / Sub Court, Panruti.

For Appellants : Ms. Ramya V. Rao

For Respondents : Ms. R.Sreevidhya for R2



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R1 – ex parte.

J U D G M E N T

The appeal has been filed challenging the award passed by the Tribunal in M.C.O.P. No. 43 of 2019 dated 11.01.2023.

2.The appellants had filed claim petition seeking compensation before the Tribunal stating that on 07.01.2019, when the deceased was riding a motorcycle bearing Registration No. TN 31 BL 5940 in Kaadampuliyur to Kaatandikuppam Main Road opposite to Kaadampuliyur TASMACH Shop, a car bearing Registration No. TN 31 AH 8590 driven in a rash and negligent manner dashed his motorcycle and as a result of which, the deceased sustained severe injuries all over the body and died.

3.The first respondent remained ex parte before the Tribunal.

4.The second respondent filed counter denying all the averments made in the claim petition stating that the driver of the car was under the influence of alcohol and drove the vehicle, which is a breach of policy condition; that the car was not insured with the second respondent at the



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time of the accident and hence, the second respondent is not liable to pay compensation; and that in any case, the compensation claimed by the appellants is excessive and prayed for dismissal of the petition.

5.The appellants examined three witnesses on their side PW.1 to PW.3 and marked Ex.P.1 to Ex.P.13. The second respondent examined RW1 and marked Ex.R.1 to Ex.R.3.

6.The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the rash and negligent driving of the car by the first respondent and awarded a compensation of Rs. 22,43,900/- to the appellants to be paid by the second respondent at the first instance and recover the same from the first respondent. Aggrieved by the said award, the appellants had preferred the instant appeal.

7.The learned counsel for the appellants submitted that the Tribunal had fixed a meagre notional income of Rs. 12,000/- though the appellants had established that the deceased was the driver cum owner of a Maxicab. Considering the year of the accident, the learned counsel



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submitted that higher notional income ought to have been fixed by the Tribunal. The learned counsel further submitted that the Tribunal awarded Rs. 33,000/- towards loss of love and affection for the two minor children instead of Rs. 88,000/-; and that the Tribunal has not awarded any compensation under the head loss of estate and hence, prayed for enhancement.

8.The first respondent remained ex parte before the Tribunal and notice to him has been dispensed with by the order of this Court dated 09.08.2023.

9.The learned counsel for the second respondent, per contra, submitted that the appellants have not produced any document to prove the income of the deceased; that therefore the Tribunal had rightly fixed the notional income at Rs. 12,000/- and 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?

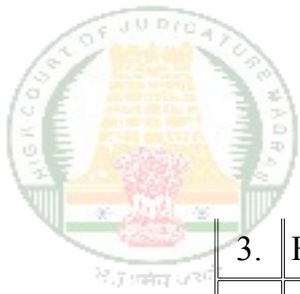


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11. It is seen that the appellants had examined PW.1 to show that the deceased owned a Maxicab and was working as driver. However, the appellants have not produced any document to prove that the deceased owned a Maxicab. Considering the fact that the accident took place in the year 2019, age of the deceased and his avocation as a driver, this Court is of the view that it would be just and reasonable to fix Rs.15,000/- per month as the notional income. Since the deceased was aged 31 years, the appellants are entitled to 40% towards future prospects and the multiplier applicable is 16. Therefore, the loss of income would be Rs. 15,000/- + Rs. 6,000 (40% future prospects) = Rs. 21,000/- x 12 x 16 x 2/3 = Rs. 26,88,000/-. The award under the head loss and affection is enhanced to Rs. 88,000/-. The tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs. 16,500/- is awarded under the head loss of estate. The award under the other heads is 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 dependency	21,50,400	26,88,000	Enhanced
2.	Loss of love and affection	33,000	88,000	Enhanced



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3.	Funeral expenses	16,500	16,500	Confirmed
4.	Loss of consortium	44,000	44,000	Confirmed
5.	Loss of estate	---	16,500	Granted
	Total	22,43,900	28,53,000	Enhanced by Rs. 6,09,100/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs. 22,43,900/- is hereby enhanced to Rs. 28,53,000/- 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 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 first appellant is permitted to withdraw her share of the award amount along with proportionate interest and costs as per the apportionment fixed by the Tribunal, less the amount if any, already withdrawn. The shares of the minor second and third appellants are directed to be deposited in the interest bearing fixed deposit in any of the Nationalized Banks till they attain majority and the first appellant is permitted to withdraw the accrued interest once in six months. The appellants are directed to pay the necessary court fee if any on the



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enhanced award amount. No costs.

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accident Claims Tribunal / Sub Court,
Panruti.
2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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