



CMA No. 2359 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2359 of 2023

1.Pappathi

2.Ponnusami

3.Rajkumar

... Appellants

Versus

1.Vetriselvan

2.The Branch Manager,
Oriental Insurance Company Ltd.,
1st Floor, Siddha Veerappa Chetti Street,
Dharmapuri.

... 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. 569 of 2019 dated 17.06.2022 on the file of the Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

For Appellants : Mr. C. Prabakaran.

For Respondents : Mr. D. Bhaskaran for R2.

R1 – Ex parte.



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J U D G M E N T

The claimants have preferred the instant appeal seeking enhancement of compensation in the award passed by the Tribunal in M.C.O.P. No. 569 of 2019 dated 17.06.2022.

2.The claimants/appellants filed the claim petition stating that on 21.03.2019 at about 7.00 p.m., while the deceased was proceeding in his two wheeler on a public road, the motorcycle belonging to the first respondent and insured with the second respondent came in a rash and negligent manner dashed against the vehicle of the deceased, as a result of which the deceased sustained fatal injuries.

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

4.The second respondent filed a counter stating that the accident took place only due to the negligence of the deceased; that the rider of the two wheeler insured with the second respondent did not have valid license; and that in any case, the compensation claimed was excessive and prayed for dismissal of the appeal.



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5.The appellants examined PW1 and PW2 and marked Ex.P.1 to

Ex.P.15. The second respondent examined RW1 and marked Ex.R.1.

6.The Tribunal after taking into consideration the oral and documentary evidence held that the accident took place due to the negligence of the rider of the two wheeler insured with the second respondent; that he did not have valid driving license and directed the second respondent to pay a compensation of Rs.14,27,000/- to the appellants at the first instance and recover it from the first respondent.

7.The learned counsel for the appellants submitted that the deceased was a 17 years old boy studying first year B.A., in a private college; that the Tribunal had fixed a very low monthly notional income of Rs.7,500/- which requires enhancement and prayed for allowing the appeal.

8.Though notice has been served on the first respondent, none has entered appearance on his behalf.



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9.The learned counsel for the second respondent, per contra, submitted that the deceased himself was a tortfeasor; that he had ridden the motorcycle without valid license and therefore, the second respondent is not liable to pay compensation; and that in any case, the Tribunal ought to have fixed contributory negligence on the deceased and submitted that the compensation awarded by the Tribunal is just and reasonable and hence, 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.

11.On perusal of the records, it is seen that the deceased was a minor. The Tribunal found that the accident took place due to the negligence of the rider of the two wheeler insured with the second respondent. The second respondent has not challenged the said finding. The notional income fixed by the Tribunal at Rs.7,500/- is meagre which requires enhancement. Considering the age of the deceased and the year of the accident, this Court is of the view that it would be just and reasonable to fix Rs.10,000/- per month as notional income. Since the



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deceased was aged 17 years at the time of the accident, the appellants are entitled to 40% enhancement towards future prospects and the multiplier applicable is 18. Since the deceased died as a bachelor, 50% has to be deducted towards personal expenses. Therefore, the compensation under the head loss of income would be Rs.10,000 + Rs.4,000 (40% of Rs.10,000) = Rs.14,000 X 12 X 18 X ½ = Rs.15,12,000/-. The award under the other heads are just and the same are confirmed. The finding of the Tribunal that the second respondent is liable to pay the compensation at the first instance and thereafter recover it from the first respondent is 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.	Pecuniary loss	11,34,000	15,12,000	Enhanced
2.	Loss of love and affection	44,000	44,000	Confirmed
3.	Funeral Expenses	16,500	16,500	Confirmed
4.	Loss of Estate	16,500	16,500	Confirmed
5.	Loss of filial consortium	88,000	88,000	Confirmed
6.	Medical expenses	1,25,000	1,25,000	Confirmed
7.	Transport charges	3,000	3,000	Confirmed
	Total	14,27,000	18,05,000	Enhanced by Rs.3,78,000/-

12. With the above modification, this Civil Miscellaneous Appeal is



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partly allowed and the compensation awarded by the Tribunal at Rs.14,27,000/- is hereby enhanced to Rs.18,05,000/- 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 proportionate 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 appellants are permitted to withdraw their respective shares of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The appellants are directed to pay the necessary Court fee if any on the enhanced award amount. No costs.

29.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To



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1. The Motor Accident Claims Tribunal,
Special District Court, Dharmapuri.

2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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