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CMA No. 2357 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2357 of 2023

1. Sheela

2. Minor Mithran

3. Mageswari

(Minor 2nd appellant rep., by mother guardian
NF Sheela the 1st petitioner herein)

... Appellants

Versus

1. K. Gunasekaran

2. The Divisional Manager,
United India Insurance Company Ltd.,
No. 13A, Nethaji Road,
Cuddalore – 607 001.

... 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. 1367 of 2020 dated 28.02.2023 on the file of the Motor Accident Claims Tribunal / I Additional District & Sessions Judge (FAC) Cuddalore.

For Appellants

: Ms. N. Keerthana for
Ms. Ramya V. Rao.

For Respondents

: Mrs. R. Sreevidhya for R2.



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R1 – Dispensed with.

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. 1367 of 2020 dated 28.02.2023.

2.The appellants filed the claim petition stating that on 19.10.2020 at about 13 hrs, while the deceased was riding a two wheeler in a public road, the bus belonging to the first respondent and insured with the second respondent came in a rash and negligent manner and dashed against the two wheeler, 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; 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 to PW3 and marked Ex.P.1 to Ex.P.20. The second respondent neither examined any witness nor marked any document.

6.The Tribunal after taking into consideration the oral and documentary evidence held that the accident took place due to the negligence of the driver of the bus insured with the second respondent and directed the second respondent to pay a compensation of Rs.26,95,000/- to the appellants.

7.The learned counsel for the appellants submitted that the award of compensation requires enhancement since the Tribunal fixed a very low notional income of Rs.15,000/-, though the appellants had established the fact that the deceased was working as Potter (clay utensil and toys manufacturing) and hence, prayed for enhancement.

8.Notice to the first respondent has been dispensed with by order of this Court dated 30.08.2023.

9.The learned counsel for the second respondent, per contra,



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submitted that the compensation awarded by the Tribunal is just and reasonable in the absence of any evidence to prove either the avocation or income of the deceased 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 appellants had examined PW1, wife of the deceased to prove the avocation of the deceased. The appellants had also marked Ex.P.20 salary certificate issued by the employer of the deceased who was running a handcraft centre. However, it is seen that no other document such as Bank Statement have been filed to corroborate the evidence of PW3, employer of the deceased. Therefore, the Tribunal was right in fixing the notional income. However, this Court is of the view that considering the age, avocation and the year of the accident, it would be just and reasonable to fix the notional income at Rs.17,000/-. Since the deceased was aged 37 years at the time of the accident, the appellants are entitled to 40% enhancement towards future prospects and the multiplier applicable is



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15. Therefore, the compensation under the head loss of income would be Rs.17,000 + Rs.6,800 (40% of Rs.17,000) = Rs.23,800 X 12 X 15 X 2/3 (1/3 deducted towards personal expenses) = Rs.28,56,000/-. The award under the other heads are 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 income	25,20,000	28,56,000	Enhanced
2.	Loss of spousal consortium	44,000	44,000	Confirmed
3.	Loss of parental consortium	44,000	44,000	Confirmed
4.	Loss of filial consortium	44,000	44,000	Confirmed
5.	Loss of estate and funeral expenses	33,000	33,000	Confirmed
6.	Transportation charges	10,000	10,000	Confirmed
	Total	26,95,000	30,31,000	Enhanced by Rs.3,36,000/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.26,95,000/- is hereby enhanced to Rs.30,31,000/- together with



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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. On such deposit, the appellants 1 and 3 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 share of the minor second appellant is directed to be deposited in any of the nationalized bank in a interest bearing Fixed Deposit till he attains majority and the first appellant is permitted to withdraw the accrued interest once in every six months. The appellants are directed to pay the necessary Court fee if any on the enhanced award amount. No costs.

27.09.2023

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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 Accident Claims Tribunal,
I Additional District & Sessions Judge (FAC),
Cuddalore.
2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.

C.M.A. No. 2357 of 2023

Dated: 27.09.2023