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C.M.A.No.2225 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.2225 of 2023

1. R.Sekar

2. S.Deepika, Minor

3. S.Venkatesh, Minor

(Petitioners 2 and 3 are represented by
their father and Next friend R. Sekar)

All are residing at No.4E, Anna Street,
Pudha Perukalathur, Chennai – 600 063.

... Appellants/Petitioners

Vs.

1.S.Sundaram

2.Reliance General Insurance Company Limited,

Reliance House, 6th Floor, No.6, Haddows Road,

Nungambakkam, Chennai – 600 034.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.12.2021 passed in M.C.O.P.No.5279 of 2019 on the file of Motor Accident Claims Tribunal, Chennai, Chief Judge, Court of Small Causes, Chennai.



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For Appellants : Mr.K.Balaji
For Respondents : R1 – Exparte
R2 – Mr. P. Suresh Srinivasan

J U D G M E N T

The claimants have filed the instant appeal seeking enhancement of the compensation awarded by the Tribunal.

2. The appellants filed the claim petition stating that on 08.08.2019 at about 18.40 hours, while the deceased was travelling as a pillion rider in a motorcycle bearing Reg.No.TN-11-R-7611 on a public road, a lorry bearing Reg.No.TN-20-AB-2683 belonging to the first respondent and insured with the second respondent herein came in a rash and negligent manner and 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/insurance company in the counter stated that the accident took place only due to the negligence of the deceased; that the driver of the Tanker Lorry insured with the second respondent did not have a



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valid driving license; and that in any case, the compensation claimed before the Tribunal was excessive and prayed for dismissal of the claim petition.

5. The appellants examined P.W.1 and marked twelve documents as Exs.P1 to P12. 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 offending vehicle insured with the second respondent and directed the second respondent/insurance company to pay a compensation of Rs.18,30,000/- to the appellants.

7. The learned counsel for the appellants/claimants submitted that the award of the Tribunal is meagre inasmuch as a very low monthly notional income of Rs.10,000/- was fixed for the deceased and hence, prayed for enhancement of the compensation.



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8. Since the first respondent remained ex-parte before the Tribunal, the learned counsel for the appellants made an endorsement in the bundle to dispense with notice to the first respondent. Hence, notice to the first respondent is dispensed with.

9. The learned counsel for the second respondent/insurance company per contra, submitted that no document was filed either to prove the avocation or income of the deceased; that in the absence of which the Tribunal was right in fixing the notional income of Rs.10,000/- and prayed for dismissal of the appeal.

10. Heard the learned counsel for the appellants as well as the second respondent and perused the materials available on record.

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



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WEB COPY 12. On perusal of the records, it is seen that P.W.1/husband of the deceased had deposed before the Tribunal that he and his wife/deceased were working as masons. The FIR lodged by P.W.1 also states that the accident took place when the deceased and P.W.1 were returning after doing the construction work. The deceased was aged 34 years. Considering the age, avocation, number of dependents, and year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income of the deceased as Rs.16,000/-. The appellants would be entitled to 40% enhancement towards future prospects. The multiplier applicable is '15'. Considering the number of dependents, 1/3rd of her income has to deducted towards her personal expenses. Hence, the compensation under the head “Loss of Dependency” has to be:-

$$\text{Rs.16,000/-} + \text{Rs.6400/- (40\% of Rs.16,000/-)} \times 12 \times 15 \times \frac{2}{3} =$$
$$\text{Rs.26,88,000/-}$$



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13. 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.,18,30,000/- to Rs.28,38,000/-, break-up as follows -

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income/Dependency	16,80,000/-	26,88,000/-	Enhanced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	Loss of Consortium	1,20,000/-	1,20,000/-	Confirmed
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total	18,30,000/-	28,38,000/-	Enhanced by Rs.10,08,000/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.18,30,000/- is hereby enhanced to Rs.28,38,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of



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petition till the date of deposit. The second respondent/insurance company is directed to deposit the enhanced 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 receipt of a copy of this Judgment. On such deposit, the 1st appellant is permitted to withdraw his share of the award amount, less the amount if any, already withdrawn, on the basis of apportionment fixed by the Tribunal. The share of the minor appellants 2 and 3 are directed to be deposited in Indian Bank, High Court of Madras, Chennai – 600 104, till the minor appellants attain majority. However, the 1st appellant/father of the minor appellants 2 and 3, is permitted to withdraw the accrued interest once in three months. 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

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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Copy to

- 1.The Chief Judge, Court of Small Causes,
Motor Accident Claims Tribunal,
Chennai.
2. The Section Officer,
VR Section,
High Court,
Madras.



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SUNDER MOHAN, J

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