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C.M.A.No.2585 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 25.09.2023

CORAM :

**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

C.M.A.No.2585 of 2022

1.V.Samundeeswari  
2.V.Dineshbabu  
3.V.Dillibabu

... Appellants

Versus

1.Sri Priyanga. N.

(R1 remained *ex-parte* before the Tribunal)

2.The Manager,  
ICICI Lombard General Insurance Co.Ltd.,  
Arihant Plaza, I Floor,  
No.84 & 85, Wall Tax Road,  
Chennai – 600 003.

... Respondents

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 24.03.2022 passed in M.A.C.T.O.P.No.1164 of 2021, on the file of the Motor Accident Claims Tribunal, Special Sub-Court No.2, Small Causes Court, Chennai.

For Appellants

: Ms.Sunithi Abirami

for Mr.A.G.F.Terry Chella Raja

For R2

: Mr.B.Siva Kollapan



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## **JUDGMENT**

The appellants/claimants have preferred the instant appeal seeking enhancement of compensation.

2.The appellants filed the claim petition stating that on 25.12.2020, at about 20.50 hrs, while the deceased was riding motorcycle on a public road, another motorcycle insured with the 2<sup>nd</sup> respondent herein, came in a rash and negligent manner, hit against the motorcycle of the deceased from behind; that as a result of which, the deceased sustained fatal injuries.

3.The 1<sup>st</sup> respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal.

4.The 2<sup>nd</sup> respondent filed a counter stating that the accident took place only due to the negligence of the deceased; that in any case, the compensation claimed was excessive; and that prayed for dismissal of the claim petition.



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WEB COPY 5.Before the Tribunal, the appellants had examined P.W.1 and P.W.2 and marked Exs.P1 to P23. The 2<sup>nd</sup> respondent had 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 only due to the negligence of the rider of the offending vehicle insured with the 2<sup>nd</sup> respondent and directed the 2<sup>nd</sup> respondent to pay a compensation of Rs.13,11,600/- to the appellants.

7.The learned counsel for the appellants submitted that P.W.1-wife of the deceased deposed before the Tribunal that the deceased was running an engineering concern and earning a sum of Rs.25,000/- per month. However, the Tribunal fixed a meagre notional income of Rs.12,000/- per month and that the learned counsel submitted that the compensation requires enhancement.

8.Since the 1<sup>st</sup> respondent remained *ex-parte* before the Tribunal, the learned counsel for the appellants requested this Court to dispense



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with notice to the 1<sup>st</sup> respondent and he had also made an endorsement to that effect. Hence, notice to the 1<sup>st</sup> respondent is dispensed with.

9.The learned counsel for the 2<sup>nd</sup> respondent submitted that P.W.1 was examined to prove the avocation and income of the deceased. However, no document was filed to corroborate the evidence of P.W.1. In such circumstance, the award of the Tribunal is just and reasonable and prayed for dismissal of the appeal.

10.The only question involved 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 though the appellants examined P.W.1 to prove the avocation and income of the deceased, no document was filed. The deceased was aged 54 years. Considering the age of the deceased, avocation, year of accident and the number of dependants, this Court is of the view that it would be just and reasonable to fix a sum of Rs.16,000/- per month as notional income of the deceased and the appellants are entitled to 10% enhancement towards future prospects. The multiplier applicable is 11. After deducting 1/3<sup>rd</sup> towards



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personal expenses, the compensation under the head loss of income would be as follows:

$$\text{Rs.17,600/-} (16,000 + 10\%) \times 11 \times 12 \times \frac{2}{3} = \text{Rs.15,48,800/-}$$

The amount of compensation awarded by the Tribunal under other heads is just and reasonable and the same are confirmed. 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 |
|-------|--------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Loss of Dependency | 11,61,600                       | 15,48,800                         | Enhanced                               |
| 2.    | Loss of Consortium | 1,20,000                        | 1,20,000                          | Confirmed                              |
| 3.    | Loss of Estate     | 15,000                          | 15,000                            | Confirmed                              |
| 4.    | Funeral Expenses   | 15,000                          | 15,000                            | Confirmed                              |
|       | Total              | 13,11,600                       | 16,98,800                         | Enhanced by Rs.3,87,200/-              |

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,11,600/- is hereby enhanced to Rs.16,98,800/-, 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 2<sup>nd</sup> respondent/Insurance



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Company 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 receipt of a copy of this Judgment. On such deposit, the appellants are permitted to withdraw their respective share of the award amount now determined by this Court, as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The appellants are directed to pay the necessary Court fee, if any, on the enhanced award amount. No costs.

**25.09.2023**

rst/dpa

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

**To:**

- 1.The Special Subordinate Judge No.2,  
The Motor Vehicle Accident Tribunal,  
Small Causes Court,  
Chennai.
- 2.The Section Officer,  
VR Section,  
High Court, Madras.



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**SUNDER MOHAN, J.**

rst/dpa

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