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CMA No. 2074 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2074 of 2022

1.Kannammal

2.Kavitha

3.Dhamotharan

... Appellants

Versus

1.Subramani

2.M/s.United India Insurance Co.Ltd.,
Divisional Office,
104-A, Peramanoor Main Road,
Salem.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 59 of 1988 seeking to enhance the compensation amount made in Judgment and decree dated 01.06.2022 made in M.C.O.P. No. 810 of 2021 on the file of the Motor Accident Claims Tribunal and Special District Court at Salem by allowing the Civil Miscellaneous Appeal.

For Appellant : Mr. S.P. Yuvaraj.

For Respondents : Mr. D. Venkatachalam for R2.

No appearance for R1.



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J U D G M E N T

The appeal has been filed by the petitioners challenging the quantum of compensation awarded by the Tribunal in M.C.O.P. No. 810 of 2021 dated 01.06.2022.

2.The appellants / petitioners had filed a claim petition stating that on 09.04.2021 at about 07.00 hrs, while the deceased was riding his two wheeler bearing Registration No.TN-34-R-9228 towards Perundurai-Chennimalai main road, the first respondent being the owner cum driver of the tractor bearing registration No.TN-34-B-8048, drove the tractor in a rash and negligent manner in the opposite direction and hit the two wheeler as a result of which the deceased sustained grievous injuries and died on 10.04.2021 and thus he is entitled for compensation.

3.The second respondent filed a counter denying all the averments made in the claim petition and stated that in any case, the claim was excessive.

4.The first respondent remained ex-parte before the tribunal.



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5.The appellants examined two witnesses on their side and marked Ex.P.1 to Ex.P.10 and Ex.X.1. No witness was examined on the side of the respondents and no document was marked.

6.The Tribunal after considering the oral and documentary evidence awarded a compensation of Rs.8,45,000/- to the appellants to be paid by the respondents. Aggrieved by the said quantum of compensation, the appellants had preferred the instant appeal.

7.The learned counsel for the appellants submitted that though the Tribunal has taken the age of the deceased as 55, it is seen that there is no basis for the same and the compensation awarded is meagre. The accident took place in the year 2021 and the notional income fixed by the Tribunal including future prospects at Rs.10,000/- is meagre. The Tribunal had also erroneously fixed the age of the deceased as above 55 years without any basis and adopted the multiplier '9'; that there is evidence viz., Ex.P.3 Postmortem certificate, which states that the deceased was aged about 50 years at the time of the accident. Hence the Tribunal ought to have accepted the same in the absence of any evidence



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to the contrary. The award of Rs.20,000/- each to the petitioners towards loss of love and affection is erroneous and the Tribunal ought to have awarded Rs.40,000/- each to the appellants 2 and 3 towards loss of consortium. Further, the Tribunal has not awarded any amount under the head Loss of estate.

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

9.The learned counsel for the second respondent per contra submitted that the appellants have not established the age of the deceased. The age mentioned in the postmortem certificate cannot be the basis to determine the age of the deceased. In the absence of any evidence, the Tribunal was right in fixing the age of the deceased as more than 55 years. The notional income fixed by the Tribunal as Rs.10,000/- cannot be faulted in the absence of any evidence produced by the appellants that he is earning more than the amount fixed by the Tribunal. The learned counsel further submitted that though the Tribunal has not awarded any amount towards Loss of consortium, the award of Rs.60,000/- towards loss of love and affection may be modified. The



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compensation of Rs.25,000/- awarded under the head Funeral Expenses is excessive and the same may be reduced.

10.This Court on perusal of the records and on hearing the submissions of the learned counsels on either side finds that the notional income fixed by the Tribunal as Rs.10,000/- including future prospects is meagre. The accident is of the year 2021 and considering the fact that even the wages for daily wage workers had increased substantially at the relevant time, this Court is of the view that it would be reasonable to fix the notional income at Rs.15,000/- for the deceased. The Tribunal had taken 55 years as the age of the deceased. This Court finds that there is no basis for taking the age of the deceased as above 55 years. The appellants have stated that the age of the deceased is 51 and the postmortem certificate suggest that the age of the deceased is about 50 years. Though the appellants have not established the age of the deceased by producing other acceptable documents such as aadhar card etc., in view of the averments made in the claim petition and the age recorded in the postmortem certificate, this Court considers that the age of the deceased as 51 at the time of the accident as there is no evidence to the contrary. Hence, the increase of 10% has to be taken for future



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prospects. The multiplier '11' has to be adopted. Hence, the loss of income is modified as follows; $\text{Rs.}15,000 + 10\% = \text{Rs.}16,500/- \times 12 \times 11 \times \frac{2}{3}$ (deduction towards personal expenses) = $\text{Rs.}14,52,000/-$. The compensation awarded under the head 'Loss of Love and Affection' at $\text{Rs.}60,000/-$ is erroneous and the same is deleted. $\text{Rs.}40,000/-$ each is awarded to the appellants 2 and 3 towards loss of consortium. The compensation of $\text{Rs.}25,000/-$ towards funeral expenses is reduced to $\text{Rs.}15,000/-$ and a sum of $\text{Rs.}15,000/-$ is awarded towards loss of estate. 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 income	7,20,000	14,52,000	Enhanced
2.	Loss of Love and Affection	60,000	---	Deleted
3.	Loss of consortium	40,000	1,20,000	Enhanced
4.	Funeral Expenses	25,000	15,000	Reduced
5.	Loss of Estate	---	15,000	Granted
	Total	8,45,000	16,02,000	Enhanced by $\text{Rs.}7,57,000/-$

11. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at



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Rs.8,45,000/- is hereby enhanced to Rs.16,02,000/- 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 / 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 a receipt of copy of this Judgment. On such deposit the appellants are permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn as per the apportionment made by the Tribunal. The appellants are directed to pay the necessary Court Fee if any on the enhanced award amount. No costs.

18.07.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Motor Accident Claims Tribunal,
Special District Court,
Salem.



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SUNDER MOHAN, J

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