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CMA Nos. 2071 & 1807 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal Nos. 2071 & 1807 of 2023

C.M.A. No. 2071 of 2023:

The Manager,
M/s.National Insurance Company Limited,
No.66, Murugesu Naicken complex,
Greaves Road,
Chennai – 600 006.
Appellant

...

Versus

1.S. Renuka

2.S.Divya Dharshini (Minor)

3.S.Praveen Kumar (Minor)

(Minor 2nd and 3rd respondents rep. by
their Natural Guardian Mother and Next
friend Mrs.Renuka)

4.V.Rajakumari

5.Saravanan T.M.

... Respondents

For Appellant : Mr. R. Sree Vidhya

For Respondents : R5 - Exparte



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Mr. K. Balaji (for R1 to R4)

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C.M.A. No. 1807 of 2023:

1.S. Renuka

2.S.Divya Dharshini (Minor)

3.S.Praveen Kumar (Minor)

(Minor 2nd and 3rd respondents rep. by
their Natural Guardian Mother and Next
friend Mrs.Renuka)

4.V.Rajakumari

... Appellants

Versus

1.Mr. Saravanan T.M.

2.The Manager,
M/s.National Insurance Company Limited,
No.66, Murugesu Naicken complex,
Greaves Road,
Chennai – 600 006.

... Respondents

For Appellants : Mr. K. Balaji

For Respondents : R1 - Exparte

Mr. R. Sree Vidhya (for R2)

COMMON 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. 3691 of 2021 dated 20.02.2023 on the file of the Motor
Accident Claims Tribunal, II Judge, Court of Small Causes at Chennai.



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COMMON JUDGMENT

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C.M.A. No. 2071 of 2023 has been filed by the insurance company challenging the quantum of compensation and C.M.A. No. 1807 of 2023 has been filed by the claimants seeking enhancement of compensation awarded by the Tribunal in M.C.O.P. No. 3691 of 2021 dated 20.02.2023. Parties are hereinafter referred as per their rank in the claim petition for the sake of convenience.

2.The claimants filed claim petition seeking compensation stating that on 28.07.2021 at about 1.00am, when the deceased as a Pedestrian was crossing the GST Road at Chennai, the driver of the offending vehicle insured with the insurance company came in a rash and negligent manner and dashed against the deceased as a result of which the deceased sustained fatal injuries.

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

4.The insurance company filed a counter denying all the averments made in the claim petition stating that the accident did not take place due



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to the negligence of the driver of the offending vehicle; and that in any case, the compensation claimed by the claimants is excessive and prayed for dismissal of the petition.

5.The claimants examined PW1 and PW2 and marked Ex.P.1 to Ex.P.17. The insurance company 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 and directed the insurance company to pay a compensation of Rs.23,25,800/- to the claimants.

7.Mrs. R. Sreevidhya, learned counsel for the insurance company submitted that though the deceased was 43 years at the time of the accident, the Tribunal had awarded 40% enhancement towards future prospects, when the appellants are entitled to only 25%.

8.The learned counsel for the claimants, per contra, submitted that



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the notional income fixed by the Tribunal is meagre and sought for enhancement of compensation.

9. Since the first respondent remained *exparte* before the Tribunal, the learned counsel for the claimants has sought permission of this Court to dispense with the notice to the first respondent and has made an endorsement to that effect. Hence, the notice to the first respondent is dispensed with.

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. There is no dispute with regard to the finding of negligence and award of compensation under the other heads. As regards the compensation under the head loss of income, it is seen that the deceased was 43 years and hence the claimants would be entitled to only 25% enhancement towards future prospects. The Tribunal erred in awarding 40% enhancement towards future prospects. The multiplier applicable is

14. The Tribunal had fixed the notional income as Rs.12,000/-. The



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claimants had examined PW1 to prove the avocation of the deceased and had marked Ex.P.16, salary certificate and Ex.P.6, driving license of the deceased to prove the income and avocation of the deceased. However, it is seen that the employer of the deceased was not examined and no other supporting document has been filed to substantiate the claim for income. Therefore, this Court is of the view that considering the avocation, age, number of dependents and year of accident, it would be just and reasonable to fix the notional income at Rs.17,000/- per month. Thus, the award under the head loss of Dependency would be Rs.17,000 + Rs.4250/- (25% of Rs.17,000) = Rs.21,250 X 12 X 14 X 3/4 = Rs.26,77,500/-. 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 Dependency	21,16,800	26,77,500	Enhanced
2.	Loss of consortium	1,76,000	1,76,000	Confirmed
3.	Loss of Estate	16,500	16,500	Confirmed
4.	Funeral Expenses	16,500	16,500	Confirmed
	Total	23,25,800	28,86,500	Enhanced by Rs.5,60,700/-



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12. With the above modification, both the appeals are partly allowed and the compensation awarded by the Tribunal at Rs.23,25,800/- is hereby enhanced to Rs.28,86,500/- 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 insurance 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 a receipt of copy of this Judgment, if not already deposited. On such deposit, the claimants 1 and 4 are permitted to withdraw their respective shares of the award amount along with interest and costs, less the amount if any, already withdrawn as per the apportionment fixed by the Tribunal. The shares of the minor claimants 2 and 3 are directed to be deposited in the interest bearing Fixed Deposit in any of the Nationalized Banks till they attain majority and the first claimant is permitted to withdraw the accrued interest once in every six months. The claimants are further directed to pay the requisite court fee, if any, on the enhanced award amount. No costs.

14.09.2023

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Index: Yes/No



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Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

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SUNDER MOHAN, J

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To

1. The Motor Accident Claims Tribunal,
II Judge, Court of Small Causes at Chennai.
2. The Section Officer,
VR Section,
Madras High Court,
Chennai – 600 104.

C.M.A. Nos. 2071 & 1807 of 2023

Dated: 14.09.2023