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C.M.A.No.757 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA
CMA.No. 757 of 2022

1.Suchitra

2.Gunaseelan

3.Sathyaseelan

(Appellants 2 and 3 declared as Majors and
discharged Guardianship of their mother Suchitra (A1)
vide Court order dated 27.01.2022 made in
CMP.Nos.20842, 20844, 20841, 20840 of 2021 in
C.M.A.Sr.No. 106547/21)

4. Anthonyammal.

...Appellants

Vs.

1.L.Narayanan

2.The New India Assurance Co.Ltd.,
rep. by its Divisional Manager,
No.69/70, Sheikpet nadu street,
Kancheepuram

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree dated 06.11.2019 passed in M.C.O.P.No.26 of 2013 on the file of Motor Accident Claims



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Tribunal/ Chief Judicial Magistrate Court, Chengalpattu.

For Appellants : Mr.T.A. Srinivasen

For R-1 : Ex-parte

For R-2 : Mr.J.Chandran

JUDGMENT

This appeal is filed challenging the Award and Decree passed in M.C.O.P.No.26 of 2023 on the file of Motor Accidents Claims Tribunal/ Chief Judicial Magistrate Court, Chengalpattu.

2. The appeal is filed by the claimants seeking enhancement of compensation.

On 04.04.2012, while the deceased was riding his motor cycle, the driver of the lorry belonging to the first respondent drove the lorry in a rash and negligent manner and while taking reverse, the lorry dashed against the deceased causing fatal injuries.

3. According to the claimants, the deceased was aged 36 years at the time of the accident, was a councilor for Ward No.13 of Uthiramerur town



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panchayat, was running a cell phone sales and service centre at Uthiramerur and was earning Rs.25,000/- per month, from the above business and as a councilor. The claimants therefore filed the claim petition seeking compensation of Rs.20,00,000/-.

4. The first respondent, owner of the lorry remained ex-parte and the claim petition was contested by the second respondent/Insurance company. The second respondent Insurance company filed detailed counter denying all the averments in the claim petition apart from disputing negligence, liability and quantum of compensation.

5. Before the Claims Tribunal, the claimant examined 2 witnesses and marked Ex.P.1 to Ex.P.16 in support of the case. On the side of the respondent, no documentary or oral evidence was adduced.

6. The Claims Tribunal on an assessment of the entire evidence on record rendered a finding of negligence against the driver of the first respondent, assessed the compensation at Rs.12,98,500/- along with 7.5%



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interest and mulcted the liability on the second respondent/Insurance company. Not satisfied with the award passed by the Claims Tribunal, the claimants have filed the above appeal for enhancement.

7. The learned counsel for the appellant submitted that the deceased was a councilor in the Uthiramerur town panchayat and also running a cell phone sales and service business in Uthiramerur, and so the tribunal erred in assessing the notional income of the deceased at Rs.6,500/- per month only. The learned counsel further submitted that the Claims Tribunal erred in not awarding any amount towards loss of love and affection to the children and the mother of the deceased. On the aforesaid grounds, the learned counsel prayed for enhancement of compensation.

8. The learned counsel for the second respondent/Insurance, on the other hand, submitted that the award passed by the Claims Tribunal was just, fair and reasonable and did not call for any interference in the appeal.



9. I have heard both the learned counsels and have perused the materials placed on record.

10. It is seen that the deceased died in a motor accident which occurred on 04.04.2012, leaving behind his wife, two children and mother. The Claims Tribunal in the absence of any evidence assessed the notional income of the deceased at Rs.6,500/- per month. In my view, considering the age, avocation and the cost escalation for the year 2012, the notional income can be fixed at Rs.12,000/- per month.

11. I find justification in the submission of the learned counsel for the appellants that the Claims Tribunal ought to have awarded Rs.40,000/- each to the mother and the children of the deceased towards loss of love and affection.

12. The notional income of the deceased is assessed at Rs.12,000/- per month, 40% is added towards Future Prospects, 1/4th is deducted towards deceased's personal expenses and multiplier '15' appropriate to the age of



the deceased is adopted. Therefore, the loss of dependency is assessed at Rs.22,68,000/- ($12,000 \times 40/100 = 4,800 + 12,000 = 16,800 \times 12 \times 15 - 1/4 = 22,68,000/-$). The claimants 2 to 4 are entitled to Rs.40,000/- each towards loss of love and affection and as regards the other heads, the award of the Claims Tribunal is confirmed.

13. In view of the above discussions the award of the Tribunal is modified as follows:

S.No	Various heads	Award by Tribunal (amount in Rs.)	Award by this Court (amount in Rs.)
1.	Loss of Dependency	12,28,500/-	22,68,000/-
2.	Loss of Consortium	40,000/-	40,000/-
3.	Love and Affection	Nil	1,20,000/- (40,000 (each) x 3)
4.	Funeral Expenses	15,000/-	15,000/-
5.	Loss of Estate	15,000/-	15,000/-
Total compensation		12,98,500/-	24,58,000/-

In the result, the claimants are entitled to Rs.24,58,000/- along with 7.5% interest.



14. It is submitted by the learned counsel for the second respondent/ Insurance company that the entire award amount along with accrued interest and costs was already deposited before the Claims Tribunal and the same was also withdrawn by the claimants. In view of the submission, there shall be a direction to the second respondent/Insurance company to deposit the balance enhanced amount of Rs.11,59,500/- along with 7.5% interest from the date of claim petition till the date of deposit within a period of twelve (12) weeks from the date of receipt of copy of this Judgment. On such deposit being made, the claimants are entitled to withdraw their proportionate share by making proper application before the Claims Tribunal.

15. It is stated by the learned counsel for appellants that claimants 2 and 3 have attained majority. In view of the submissions made, the claimants 2 and 3 shall be entitled to withdraw their shares by filing proper application before the Claims Tribunal.



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16. It is seen that the appeal was restricted to Rs.7,00,000/-, therefore a direction is issued to the claimants to remit the deficit Court fee on the enhanced compensation. Registry is directed not to draft the decree till the deficit Court fee is paid.

In the result, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

26.06.2023

dsn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation: Yes/No



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To
The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Chengalpattu

Copy to
The Section Officer,
V.R.Section,
High Court, Madras.



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N.MALA.,J.

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