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C.M.A.No.307 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.08.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.307 of 2022

Lissie Annathai

... Appellant

Vs.

1.N.Kavitha

2.The Oriental Insurance Company Ltd.,

New No.216, Prakasam Road, Broadway, Chennai – 108

Branch Office at No.362, Thiruvallur High Road,

1st Floor, Avadi, Chennai – 54.

3.M.Moses Annadurai

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.09.2019 in MCOP.No.628 of 2016 on the file of the Motor Accident Claims Tribunal, II-Additional District Judge, Tiruvallur, Poonamallee.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.N.Sampath for R2

No appearance for R1

R3 - left



J U D G M E N T

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The Civil Miscellaneous Appeal is filed by the claimant challenging the quantum of compensation awarded by the Tribunal in MCOP.No.628 of 2016, dated 30.09.2019, on the file of the Motor Accident Claims Tribunal, II-Additional District Judge, Tiruvallur, Poonamallee.

2. The appellant filed MCOP.No.628 of 2016 on the file of the Motor Accident Claims Tribunal II-Additional District Judge, Tiruvallur, Poonamallee, claiming a sum of Rs.50,00,000/- as compensation for the death of Kerson Paul Durai, who died in the accident that took place on 13.09.2016.

3. According to the appellant, on 13.09.2016 at about 03.45 p.m. while the deceased was riding in a two wheeler bearing Registration No.TN-76-S-6640, on the extreme left side of the road in Tharamani link Road, opposite to Athipathi Hospital from East to West, the driver of the car belonging to the first respondent bearing Registration No.TN-22-CS-2693 drove the same in a rash and negligent manner from West to East without observing the Traffic Rules and dashed against the two wheeler of the deceased. Due to the said impact, the deceased sustained head injury and



multiple injuries all over the body and admitted in Kamatchi Hospital for treatment and later died in the Hospital. Therefore, the appellant filed the claim petition claiming a sum of Rs.50,00,000/- as compensation.

4. The first respondent, the owner of the offensive vehicle, remained *ex-parte* before the Tribunal.

5. The second respondent/Insurance Company filed counter statement denying all the averments made in the claim petition and stated that the accident did not happen due to the rash and negligent driving by the driver of the car bearing registration No.TN-22-CS-2693; they denied the age, income of the deceased; stated that the driver of the car did not have valid and effective driving license on the date of the accident; and that in any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined P.W.1 and P.W.2 and marked twenty four documents as Exs.P1 to P24. On the side of the second respondent/ Insurance Company neither oral nor documentary evidence was adduced.



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7. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to the rash and negligent the act of driver of the first respondent's vehicle and directed the second respondent being the insurer of the offending vehicle to pay a sum of Rs.32,35,537/- as compensation to the appellant. Aggrieved over the said award, the appellant has preferred the instant appeal.

8. The learned counsel for the appellant submitted that the compensation awarded by the Tribunal is meagre and that though the appellant had examined the employer of the deceased and proved his income by marking salary certificate as Ex.P8; the Tribunal had taken into consideration the appointment letter which does not reveal the correct income earned by the deceased. The learned counsel submitted that P.W.3 Administrative Manager, working in the company where the deceased was working at the time of accident had stated that the deceased was earning Rs.32,162/- as monthly income and marked Ex.P.16 to substantiate the same.



9. The first respondent remained *ex-parte* before the Tribunal. Hence, the learned counsel prayed that notice to the first respondent may be dispensed with and had also made an endorsement to that effect in the Court bundle. Hence, notice to the first respondent is dispensed with.

10. Per contra, the learned counsel for the second respondent submitted that the Tribunal had taken into consideration Ex.P.19, Appointment Order issued to the deceased, wherein, the basic salary is mentioned as Rs.21,150/-. Therefore, the Tribunal was right in adopting Rs.21,150/- as monthly income and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent and perused all the materials available on record before this Court.

12. The only question involved in this appeal is whether the compensation awarded by the Tribunal is just and reasonable.

13. The only issue involved in this instant appeal is whether the Tribunal had correctly ascertained the income earned by the deceased for the



purpose of calculating loss of income. The appellant had examined P.W.3, Administrative Manager of the Company in which the deceased was employed. The appellant had also marked Ex.P.16, salary certificate issued by the employer through P.W.3. The said salary certificate reveals that the monthly income earned by the deceased was Rs.32,162/-. Therefore, the Tribunal ought to have taken into consideration this evidence adduced before it. There was no reason to reject this evidence and fix the income as Rs.21,150/-, which is the basic salary found in Ex.P.19 Appointment Letter issued earlier. It is pertinent to point out that the appellant has also examined P.W.4, Manager, of the another company who had deposed that the said company had offered employment to the deceased for a monthly salary of Rs.65,000/- to prove that the deceased had a good earning capacity. Therefore, this Court is of the view that the monthly income of the deceased should be reckoned as Rs.32,162/-. The deceased was aged 27 years at the time of the accident. Therefore, the appellants are entitled to 40% enhancement towards future prospects. Thus the compensation under the head “Loss of Income” has to be $\text{Rs.32,162/-} + 12,864 = \text{Rs.45,026/-} \times 12 \times 17 \times \frac{1}{2}$ (since the deceased was a bachelor) = Rs.45,92,652/-. The award of compensation under the other heads are reasonable and confirmed.



14. 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 or reduced
1.	Loss of income	30,20,220	45,92,652	Enhanced
2.	Medical expenses	1,45,317	1,45,317	confirmed
3.	Loss of estate	15,000	15,000	confirmed
4.	Loss of love and affection	40,000	40,000	confirmed
5.	Funeral expenses	15,000	15,000	confirmed
	Total	Rs.32,35,537/-	Rs.48,07,969/-	Enhanced by Rs.15,72,432/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.32,35,537/- is hereby enhanced to Rs.48,07,969/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any,



within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount if any, already withdrawn. No costs.

23.08.2023

Index: Yes/No

Internet: Yes/No

Speaking order: Yes/ No

gba

To

1.The Additional District Judge-II,
Motor Accident Claims Tribunal,
Tiruvallur, Poonamallee.

2.The Section Officer
VR Section
High Court of Madras, Chennai – 600 104.



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SUNDER MOHAN,J.

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