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CMA Nos. 2064 & 2385 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal Nos. 2064 & 2385 of 2023
and

C.M.P. No. 22482 of 2023

C.M.A. No. 2064 of 2023:

1.Bhuvaneswari

2.Jeevanandham

3.Minor Kiruthika

4.Minor Keerthina

5.Govindhammal

6.Perumal

(Minors are rep. By their NF/Guardian
Mother, Bhuvaneswari)

... Appellants

Versus

1.K.Selvam

2.M/s. The New India Assurance Co.Ltd.,
Having Divisional Office at TP Hub,
Sedhu Krishna Trade Centre,
No.133/21-A, Trichy Main Road,
Gugai, Salem.

... Respondents

For Appellants

: Mr. R. Navaneetha Krishnan.

For Respondents

: Mr. J. Chandran for R2.

R1 – Ex parte.



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C.M.A. No. 2385 of 2023:

M/s. The New India Assurance Co.Ltd.,
Having Divisional Office at TP Hub,
Sedhu Krishna Trade Centre,
No.133/21-A, Trichy Main Road,
Gugai, Salem.

...Appellant

Versus

1.Bhuvaneswari

2.Jeevanandham

3.Minor Kiruthika

4.Minor Keerthina

5.Govindhammal

6.Perumal

(Minors are rep. By their NF/Guardian
Mother, Bhuvaneswari)

7.K.Selvam

...Respondents

For Appellant : Mr. J. Chandran

For Respondents : Mr. R. Navaneetha Krishnan for R1 to R6.
R7 – Ex parte.

COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No. 1465 of 2021 dated 01.06.2023 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

COMMON JUDGMENT

The claimants have preferred the appeal in C.M.A. No. 2064 of 2023 seeking enhancement of compensation and the insurance company



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has preferred the appeal in C.M.A. No. 2385 of 2023 challenging the finding with regard to negligence in the award passed by the Tribunal in M.C.O.P. No. 1465 of 2021 dated 01.06.2023.

2. Parties are hereinafter referred as per their rank in the claim petition for the sake of convenience. Since both the appeals challenge the very same award, they are taken up together for disposal.

3. The claimants filed the claim petition stating that on 17.07.2021 at about 12 hrs, when the deceased was riding his motorcycle and was crossing a main road, the car belonging to the first respondent and insured with the second respondent came in a rash and negligent manner and dashed against the deceased, as a result of which, the deceased sustained severe injuries and succumbed to injuries on 28.08.2021.

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

5. The second respondent filed a counter stating that the accident took place due to the negligence of the deceased who had attempted to cross a main road where he was not supposed to and was under the



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influence of alcohol; that therefore, the second respondent was not liable to pay compensation; and that in any case, the compensation claimed was excessive and prayed for dismissal of the appeal filed by the claimants.

6.The appellants examined PW1 and marked Ex.P.1 to Ex.P.30. The second respondent examined RW1 and did not mark any document.

7.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 vehicle belonging to the first respondent and insured with the second respondent and directed the respondents to pay a compensation of Rs.19,55,000/- to the claimants.

8.The learned counsel for the claimants submitted that the accident took place on 17.07.2021 and the claimants had established before the Tribunal that the deceased was working as an Agriculturist and also as a milk vendor; that the Tribunal had fixed a very low monthly income of Rs.10,000/- including Future Prospects while computing the loss of income; that the award under the head Loss of Love and Affection is meagre and prayed for enhancement of compensation and allowing the



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appeal in C.M.A. No. 2064 of 2023.

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

10. The learned counsel for the Insurance company, per contra, submitted that the Tribunal ought to have fixed contributory negligence on the deceased; that it was their consistent case before the Tribunal that the deceased was under the influence of alcohol and had suddenly crossed the road and invited the accident; that the Tribunal had erroneously fixed entire negligence on the driver of the car insured with the second respondent; that PW1 admitted that the deceased did not have valid driving license and prayed for allowing the appeal in C.M.A. No. 2385 of 2023.

11. The questions that arise for consideration in the instant appeal are;



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(i) Whether the Tribunal was right in fixing the entire negligence on the driver of the car?

(ii) Whether the compensation awarded by the Tribunal is just and reasonable?

12. As regards the first question, it is seen that the claimants had examined PW1 wife of the deceased and marked Ex.P.1, FIR to prove that the accident took place due to the negligence of the deceased. The second respondent has not let in any rebuttal evidence. Therefore, the finding of the Tribunal that the driver of the offending car was responsible for the accident cannot be faulted. However, it is seen from the evidence of PW1 that she had admitted in her deposition that the deceased did not have license. Taking into consideration the consistent view taken by this Court in such circumstances, this Court is of the view that 10% contributory negligence has to be fixed for not possessing license. Hence, 10% contributory negligence is fixed on the deceased and 90% is fixed as contributory negligence on the driver of the car insured with the second respondent.



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13.As regards the quantum of compensation, it is seen that the deceased was aged 46 years at the time of accident. PW1 had deposed before the Tribunal that the deceased was working as an Agriculturist and a milk vendor. Considering the age, avocation of the deceased, year of the accident and the number of dependents, this Court is of the view that it would be just and reasonable to fix the notional income as Rs.16,000/- per month. The appellants are entitled to 25% enhancement towards future prospects and the multiplier applicable is 13. Therefore, the compensation under the head loss of income would be Rs.16,000 + Rs.4,000 (25% of Rs.16,000) = Rs.20,000/- X 12 X 13 X $\frac{3}{4}$ ($\frac{1}{4}$ deducted towards personal expenses) = Rs.23,40,000/-. The first claimant is entitled to Rs.44,000/- under the head loss of consortium. (Since the claimants would be entitled to 10% enhancement as per the Judgment of the Hon'ble Supreme Court in *National Insurance Co. Ltd vs Pranay Sethi and others* reported in **2017 (2) TN MAC 27**). Hence, the compensation under the head loss of consortium is enhanced to Rs.44,000/-. The second to sixth appellants would be entitled to Rs.44,000/- each under the head loss of love and affection and hence, the same is enhanced to 2,20,000/-. Further, the compensation under the head Funeral Expenses is on the higher side and the same is reduced to



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Rs.16,500/-. Since no amount has been awarded towards compensation under the head loss of estate, Rs.16,500/- is awarded under the said head.

The compensation under the head Medical Expenses is just and the same is 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 Income	11,70,000	23,40,000	Enhanced
2.	Loss of love and affection	1,20,000	2,20,000	Enhanced
3.	Loss of consortium	40,000	44,000	Enhanced
4.	Medical expenses	6,00,000	6,00,000	Confirmed
5.	Funeral Expenses	25,000	16,500	Reduced
6.	Loss of Estate	---	16,500	Granted
	Total	19,55,000	32,37,000	
	After deducting 10% contributory negligence	---	29,13,300	Enhanced by Rs.9,58,300/-

14. With the above modification, both the Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.19,55,000/- is hereby enhanced to Rs.29,13,300/- 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 respondents are



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directed to deposit the award amount now determined by this Court along with proportionate 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 first and second appellants are permitted to withdraw Rs.6,28,325/- each and the fifth and sixth appellants are permitted to withdraw Rs.2,00,000/- each along with proportionate interest and costs, less the amount if any, already withdrawn. The shares of the minor appellants 3 and 4 of Rs.6,28,325/- each are directed to be deposited in the interest bearing Fixed Deposit in any of the Nationalized Banks till they attain majority and the first appellant is permitted to withdraw the accrued interest once in every six months. The appellants are directed to pay the necessary Court fee if any on the enhanced award amount. No costs. Consequently, the connected Miscellaneous Petition is closed.

29.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

SUNDER MOHAN, J



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To

- 1.The Motor Accident Claims Tribunal,
Special District Judge, Salem.
- 2.The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.

C.M.A. Nos.2064 & 2385 of 2023
and
C.M.P. No. 22482 of 2023

Dated: 29.09.2023