



CMA No. 2237 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2237 of 2022

1. R.Vinothini

2. Minor R.Raghul

3. Minor R.Raghav

4. Minor R.Rakshana

5. Santha

(Minor appellants 2, 3 and 4 represented
by NF and Natural Guardian mother R.Vinothini) ... Appellants

Versus

1. Vinayagasundharam

2. ICICI Lombard General Insurance Co. Ltd.,
Building No. 142, I Floor, ECR Main Road,
Near Latha Steel House,
Kottupalayam,
Puducherry – 605 008. ... Respondents

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. 3563 of 2017 dated 22.04.2022 on the file of the Motor Accidents Claims Tribunal/II Additional Sub Judge, Cuddalore.

For Appellants : Mrs. Ramya V. Rao

For Respondents : Mr. B.Siva Kollappan for R2



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R1 – ex parte
J U D G M E N T

The appeal has been filed challenging the award passed by the Tribunal in M.C.O.P. No. 3563 of 2017 dated 22.04.2022.

2.The appellants had filed claim petition seeking compensation before the Tribunal stating that on 21.05.2017, when the deceased was walking on the left side of the Ramanathankuppam – Pudhuchathiram road from East to West, a Tata ACE Van bearing Registration No. TN 91 A 8991 driven by its driver in a rash and negligent manner in the opposite direction, dashed the deceased, as a result of which, the deceased sustained fatal injuries.

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

4.The second respondent filed a counter denying all the averments made in the claim petition stating that the deceased did not die due to the accident; that the deceased had died due to the electric wire which was fallen from electric plant in the road; that as per the post-mortem certificate, there is no external injury and the reason for the death has



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been mentioned as 'Intracranial Haemorrhage' which is possible only due to electric shock; and that the second respondent is not liable to pay compensation; and that in any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the petition.

5.The appellants examined PW1 to PW3 and marked Ex.P.1 to Ex.P.9. On the side of the second respondent, RW1 was examined and Ex.R.1 & Ex.R.2 were marked.

6.The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the rash and negligent driving of the driver of the Tata ACE Van and directed the second respondent to pay a sum of Rs.21,36,800/- to the appellants at the first instance and recover it from the first respondent. Aggrieved by the said award, the appellants had preferred the instant appeal.

7.The learned counsel for the appellants submitted that the award of compensation is meagre in as much as very low notional income of Rs.9,000/- per month was fixed by the Tribunal although the appellants had established the fact that the deceased was working as Mason.



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However, the learned counsel for the appellants fairly submitted that the compensation awarded under the other heads are just and reasonable.

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

9. The learned counsel for the second respondent, per contra, submitted that the compensation awarded by the Tribunal is just and reasonable and no interference is called for.

10. The only question that arise for consideration in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable.

11. On perusal of records, this Court finds that the appellants have examined PW1, wife of the deceased to show that the deceased was working as Mason. However, no documentary proof was filed to establish the income earned by the deceased. Considering the age, avocation of the deceased, the number of dependents and the year of the accident, this Court is of the view that it would be just and reasonable to



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fix Rs.14,000/- per month as notional income. Since the deceased was aged 29 years at the time of the accident, the appellants are entitled to 40% enhancement towards future prospects and the multiplier applicable is 17. Since there are five dependents, $1/4^{\text{th}}$ has to be deducted towards personal expenses. Therefore, the compensation under the head loss of dependency would be $\text{Rs.}14,000 + \text{Rs.}5,600 = \text{Rs.}19,600 \times 12 \times 17 \times 3/4 = \text{Rs.}29,98,800/-$. 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	19,27,800	29,98,800	Enhanced
2.	Loss of estate	16,500	16,500	Confirmed
3.	Funeral expenses	16,500	16,500	Confirmed
4.	Loss of consortium	1,76,000	1,76,000	Confirmed
	Total	21,36,800	32,07,800	Enhanced by Rs. 10,71,000/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.21,36,800/- is hereby enhanced to Rs.32,07,800/- together with



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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 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 at the first instance and recover it from the first respondent. On such deposit, the first appellant is permitted to withdraw Rs.13,00,000/- and the fifth appellant is permitted to withdraw Rs.4,07,800/- along with proportionate interest and costs, less the amount if any, already withdrawn. The shares of the minor appellants 2 to 4 of Rs.5,00,000/- 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 six months. The appellants are directed to pay the necessary court fee if any on the enhanced award amount. No costs.

08.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To

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1. The Motor Accidents Claims Tribunal/
II Additional Sub Court,
Cuddalore.
2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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