



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.08.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1796 of 2023

1.Ramani

2.Shalini

Minor Jeevitha (died)

Raji (Died)

... Appellants

**Cause title accepted vide Court order dated 05.06.2023 made in C.M.P.No.8320 of 2023 in C.M.A.SR.No.109245 of 2022.*

***2nd Appellant declared as major and her mother and next friend Ramani/1st appellant discharged from guardianship vide Court order dated 21.06.2023 made in C.M.P.No.11877 of 2023 in C.M.A.SR.No.109245 of 2023.*

Vs.

1.T.S.Indirani Ammal

2.The Manager,

United India Insurance Company Limited,

D.O., No.73C, MTH Road,

Ambattur, Chennai.

3.Dhanalakshmi

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.04.2022 in MCOP.No.293 of 2013 on the file of the Subordinate Judge, Tiruttani.



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C.M.A.No.1796 of 2023



For Appellant : Mr.K.Naveen Kumar

For Respondents : M/s.R.Sreevidhya for R2

Set *ex-parte* - R1

No appearance for R3

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant challenging the quantum of compensation awarded by the Tribunal in MCOP.No.293 of 2013, dated 01.04.2022, on the file of the Subordinate Judge, Tiruttani.

2. The appellants are the claimants in MCOP.No.293 of 2013 on the file of the Subordinate Judge, Tiruttani. They filed the claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of Ramesh, who died in the accident that took place on 04.05.2011.

3. According to the appellants, on 04.05.2011 while the deceased was driving the lorry bearing Registration No.TN-21-M-2579 and was nearing ST Colony, Seetharampeta Village in Sathyavedu Mandal to Uthukotai Main Road, the driver of a bus bearing Registration No.TN-20-BA-1222 drove the same in a rash and negligent manner without observing the Traffic Rules and dashed against the lorry of the deceased.

Due to the said impact, the deceased died on the spot. The other person



viz., Srinivasan who accompanied the deceased also sustained grievous injury. Therefore, the appellants filed the claim petition claiming a sum of Rs.10,00,000/- as compensation.

4. The first respondent, the owner of the offending 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 bus bearing registration No.TN-20-BA-1222 and that in any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellants examined P.W.1 to P.W.3 and marked five documents as Exs.P1 to P5. 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 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.9,03,000/- as compensation to the appellants. Aggrieved over the said award, the appellants have preferred the instant appeal.

8. The learned counsel for the appellants submitted that the Tribunal had awarded meagre compensation by fixing the notional income as Rs.5,000/- per month. Further, the Tribunal has not awarded enhancement under the head “future prospects” as per the decision of the Hon'ble Apex Court in ***Sarala Verma's case***. The learned counsel, further, submitted that the award of compensation under the head “Loss of Estate” has not been granted and hence, prayed for enhancement of the compensation awarded by the Tribunal.

9. Learned counsel for the appellant submitted that the first respondent remained *ex-parte* before the Tribunal and therefore, requested this Court to dispense with the notice to the first respondent and had also made an endorsement to that effect in the Court bundle.



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10. Though notice was served on the third respondent, it was returned for the reason “unclaimed”.

11. Per contra, the learned counsel for the second respondent/Insurance Company submitted that the accident was of the year 2011 and hence, the notional income fixed by the Tribunal is just and reasonable and the compensation under the other heads are also just and reasonable. The award of the Tribunal, therefore, does not call for any interference and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent/Insurance Company and perused all the materials available on record before this Court.

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



14. The Tribunal had taken the notional income as Rs.5,000/- for the accident which took place in the year 2011. The appellants have examined P.W.3, the employer of the deceased to prove the avocation of the deceased. Though, P.W.3 has deposed that he was paying a sum of Rs.15,000/- per month as salary to the deceased, no document was produced to corroborate the same. However, considering the fact that the avocation of the deceased has been established; the age of the deceased and the year of the accident, this Court is of the view that it would be just and reasonable to fix Rs.11,000/- per month as notional income of the deceased. The appellants are entitled to 40% enhancement towards future prospects. The deceased was aged 34 years at the time of the accident, therefore, multiplier applicable is 16. Hence, the award of compensation under the head "Loss of income" has to be fixed at Rs.11,000/- + 4,400 (Rs.11,000 x 40%) = Rs.15,400/- x 12 x 16 x $\frac{3}{4}$ (1/4th deducted towards personal expenses) = Rs.22,17,600/-

15. The compensation awarded by the Tribunal towards loss of consortium is just and reasonable and hence the same is confirmed. The Tribunal has awarded a meagre sum of Rs.5,000/- under the head "Funeral Expenses" and the same is enhanced to Rs.15,000/-. On perusal of the



award of the Tribunal, it is seen that the Tribunal has not awarded compensation under the head "Loss of Estate". Considering the facts and circumstances of the case, this Court is of the view that a sum of Rs.15,000/- can be awarded under the head "Loss of Estate". Thus, the compensation awarded by the Tribunal is modified as follows: -

Sl.No.	Description	Amount awarded by the Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency including future prospects	7,38,000/- (7,20,000 + 18,000)	22,17,600	Enhanced
2.	Loss of consortium	1,60,000	1,60,000	Confirmed
3.	Funeral expenses	5,000	15,000	Enhanced
4.	Loss of estate	---	15,000	Granted
	Total	Rs.9,03,000/-	Rs.24,07,600/-	Enhanced by Rs.15,04,600/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed. and the compensation awarded by the Tribunal at Rs.9,03,000/- is hereby enhanced to Rs.24,07,600/- 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 appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. Out of the modified award amount, the first appellant/ wife of the deceased is entitled to a sum of Rs.14,07,600/-. The second appellant who is the daughter of the deceased is entitled to a sum of Rs.8,00,000/- and the third respondent, the mother of the deceased is entitled to the remaining sum of Rs.2,00,000/-. 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 appellants are permitted to withdraw their respective share of the award amount along with proportionate 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

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C.M.A.No.1796 of 2023



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To

- 1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruttani.
- 2.The Section Officer
VR Section
High Court of Madras, Chennai – 600 104.

SUNDER MOHAN,J.

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C.M.A.No.1796 of 2023



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