



WEB COPY



C.M.A.No.102 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.102 of 2022

1. Selvarani
2. Ambika (Minor)
3.Reka (Minor)
4.Kesavan (Minor)
(Appellants 2 to 4 are minors represented by their
mother and guardian Selvarani)

... Appellants

Vs.

1.The Executive Engineer,
TWAD Board, Maintenance Division,
Trichy (Communication),
No.1-A/11, 11th Cross, Thillainagar,
Tiruchirapalli – 620 018.

2.United India Insurance Co. Ltd.,
No.50-A, Pallivasal Street,
Perambalur.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award passed in judgment and decree dated 30.09.2020 made in M.C.O.P.No.70 of 2016 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.



C.M.A.No.102 of 2022

For Appellants : Mr.S.P.Yuaraj

For Respondents : Mr.C.Paranthaman, for R2
R1 – Ex parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 30.09.2020 made in M.C.O.P.No. 70 of 2016 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

2. The appellants filed M.C.O.P. No.70 of 2016 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur claiming a sum of Rs.20,00,000/- as compensation for the death of one Sekar, who died in the accident that took place on 14.09.2015.

3. According to the appellants, on 14.09.2015 at about 04.20 pm, while the deceased Sekar was riding the motorcycle bearing Registration No.TN-48-AB-8580 proceeding on the Neikulam to Nedunkur road, near Nedunkur Yerikarai, the Jeep bearing Registration No.TN-45-J-7185 which



C.M.A.No.102 of 2022

was coming in opposite direction, driven by its driver in a rash and negligent manner, hit the motorcycle and caused the accident; that in the above said accident the deceased Sekar sustained grievous injuries and died on the spot. Hence, the appellants filed claim petition claiming compensation against the respondents.

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

5. The second respondent filed a counter statement denying all the averments made by the appellants in the claim petition. According to the respondent, the rider of the two wheeler rode the motorcycle in a rash and negligent manner and invited the accident; and in any case the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. The 1st appellant examined herself as PW1 and marked Ex.P.1 to Ex.P.6. The second respondent did not examine any witness or mark any document on their side.



C.M.A.No.102 of 2022

7. The Tribunal after considering the evidence and documents filed on the side of the appellants, held that the accident occurred due to the rash and negligent driving by the driver of the first respondent and directed the second respondent to pay a sum of Rs.11,72,500/- as compensation to the appellants.

8. Aggrieved by the said award, the appellants have preferred the present appeal seeking enhancement of compensation.

9. The learned counsel for the appellants submitted that the Tribunal had fixed a very meagre sum of Rs.7,000/- as notional income for the deceased, though the accident took place in the year 2015 and the appellants had established that the deceased was driver of a heavy vehicle. The appellants had also marked Ex.P5, the driving license of the deceased Sekar to establish his avocation. The learned counsel further submitted that the Tribunal had not awarded compensation under the head loss of love and affection to the appellants 2 to 4, who are the minor children of the deceased and hence, prayed for enhancement of compensation.



C.M.A.No.102 of 2022

WEB COPY

10. Since the first respondent remained ex parte before the Tribunal, the learned counsel for the appellants prayed for dispensing with notice to the first respondent. Hence, notice to the first respondent dispensed with.

11. The learned counsel for the second respondent per contra submitted that neither the income nor the avocation was established by the appellants; that they had only marked a xerox copy of the license which is inadmissible; that in the absence of any evidence, to prove the income and avocation, the Tribunal was right in fixing Rs.7,000/- as notional income; and that no interference is called for in the award of compensation and prayed for dismissal of the appeal.

12. The only question in the instant appeal is-

Whether the compensation awarded by the Tribunal is just and reasonable?



WEB COPY

13. The appellants had examined PW.1, the wife of the deceased to show that the deceased was working as a driver of a heavy vehicle. She had also marked Ex.P5, the license of the deceased. However, no proof has been filed to prove the income of the deceased. Considering the fact that the deceased was working as a driver, his age at the time of accident, the number of dependants and the year of accident, this Court is of the view that it would be just and reasonable to fix the notional income of the deceased as Rs.15,000/- per month. The deceased was aged 45 years at the time of accident and hence, the appellants are entitled to 25% enhancement towards future prospects. The multiplier applicable is '14'. The deceased was survived by his wife and three children. Hence, 1/4 has to be deducted towards his personal expenses. Hence, the award under the head loss of dependency has to be: -

$$\text{Rs.15,000} + 3750(15,000 \times 25\%) \times 12 \times 14 \times 3/4 = \text{Rs.23,62,500/-}.$$

The Tribunal had not awarded any compensation towards loss of love and affection to the appellants 2 to 4, who are the children of the deceased. Hence, a sum of Rs.40,000/- each to the appellants 2 to 4 is awarded towards loss of love and affection. The compensation awarded by the



C.M.A.No.102 of 2022

Tribunal under other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.11,72,500/- to Rs.25,52,500/-, break-up is as follows -

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	11,02,500/-	23,62,500/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Loss of consortium	40,000/-	40,000/-	Confirmed
4.	Loss of love and affection	-	1,20,000/- (Rs.40,000/- each to the appellants 2 to 4)	Awarded
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	11,72,500/-	25,52,500/-	Enhanced by Rs.13,80,000/-

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,72,500/- is hereby enhanced to Rs.25,52,500/- 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 second respondent / Insurance Company is directed to deposit the award amount, now determined by this Court along



C.M.A.No.102 of 2022

with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of a receipt of copy of this Judgment.

On such deposit, the appellants are permitted to withdraw their share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn, on the basis of apportionment fixed by the Tribunal. The share of the minors / appellants 2 to 4 is directed to be deposited in Indian Bank till the minor appellants attain majority. However, the 1st appellant, mother of the minor appellants 2 to 4 is permitted to withdraw the accrued interest once in three months. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

22.08.2023

Index: Yes/No
Neutral Citation: Yes/No
AT



C.M.A.No.102 of 2022

To

WEB COPY

1.The Motor Accident Claims Tribunal, Principal District Judge,
Perambalur.

2.The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



C.M.A.No.102 of 2022

SUNDER MOHAN, J.

AT

C.M.A.No.102 of 2022

22.08.2023