



C.M.A.No.235 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.07.2023**

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.235 of 2022

1.Britto

2.Lucia

... Appellants

Vs

1.Nirmala

2.HDFC ERGO General Insurance Company LTd.,

(The L&T Insurance)

RR Tower II,

2nd Floor No.94/ 95

TVK Industrial Estate, Guindy, Chennai - 32.

... Respondents

(vide Court ORder dated 08.06.2023 made in
C.M.P.No.12762/ 2022 in C.M.A.No.235 of 2022)

PRAYER:- This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 15.10.2020 made in M.C.O.P.No.518 of 2014 on the file of Motor Accident Claims Tribunal, (II Additional District and Sessions Judge), Tiruvallur, Poonamallee.

For Appellant : Mr.Mr.K.Varadha Kamaraj

For Respondents : Mr.E.Chandru for R1
Mr.K.Vinodh for R2



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the parents of the deceased, who are the claimants, challenging the order dated 15.10.2020 made in M.C.O.P.No.518 of 2014 on the file of Motor Accident Claims Tribunal, (II Additional District and Sessions Judge), Tiruvallur, Poonamallee.

2. It is the case of the claimants that the 1st respondent, driver of the car bearing Registration No.TN10 AL 0183 came in a rash and negligent manner and hit the deceased, who was crossing the 100 ft. road. As a result of which the deceased sustained head injuries and succumbed to the said injuries.

3. The 2nd respondent herein had filed a counter stating that the deceased had crossed the road in a negligent manner and the driver of the vehicle was not liable for negligence. The 2nd respondent further stated that the claim made by the claimants is excessive and cannot be awarded.



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4. The first respondent, who is the owner of the vehicle, remained *ex-parte* before the Tribunal and hence, the learned counsel for the appellant has made an endorsement to dispense with the notice to the first respondent.

5. Before the Tribunal, the appellants examined the 1st appellant and an eye witness as PW1 and PW2 and marked exhibits P1 to P10. On the side of the respondents neither oral nor documentary evidence was adduced.

6. The Tribunal after considering the evidence on record, held that the claimants are entitled to a compensation of Rs.14,39,600/- (Rupees Fourteen Lakhs Thirty Nine Thousand and Six Hundred only) under various heads.

7. The learned counsel for the appellants submitted that the Tribunal



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rightly held that the 1st respondent was guilty of negligence and the 2nd respondent liable for payment of compensation; that the son of the claimants was a second year M.B.A. student and had had a very bright future; that however, the Tribunal without considering his qualification and the fact that he was pursuing M.B.A, had taken a meagre notional income of Rs.8,000/- p.m. (Rupees Eight Thousand only); and that the Tribunal ought to have fixed Rs.15,000/- p.m. as the notional income considering the educational background of the deceased.

8.The learned counsel for the 2nd respondent, per contra submitted that the amount Awarded by the Tribunal is just and need not be interfered with. The notional income of Rs.8,000/- (Rupees Eight Thousand only) fixed by the Tribunal was reasonable, as the son of the claimants was not in employment. Further, the learned counsel submitted that the compensation under the head loss of affection is contrary to the dictum of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC (Sarala Verma Vs. Delhi Transport Corporation)** and **National Insurance Company Limited Vs**



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Pranay Sethi and Ors., reported in reported in **2017 (2) TNMAC 609 (SC)**.

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The amount of compensation awarded at Rs.1,00,000/- each to the claimants is excessive and the Tribunal ought to have awarded only Rs.40,000/- each as per the above decisions.

9.This Court finds that the Tribunal held that the 1st respondent is guilty of negligence. The claimants had examined the 1st appellant as PW1 and an eye witness as PW2. The respondent have not let in any evidence contrary to the said evidence. Hence, the Tribunal had rightly concluded that the 1st respondent was guilty of negligence and the 2nd respondent was liable to pay the compensation. In any case the Insurance Company has not challenged the finding on negligence.

10.As regards quantum, it is that admitted case that the deceased was a B.B.A. Graduate and was pursuing his M.B.A. degree. The accident took place in the year, 2014. This Court finds that the notional income adopted for the deceased at Rs.8,000/- p.m. is meagre. Considering the year of



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accident and the educational background and the fact that the deceased would have had a bright future, this Court is of the view that it would be reasonable to fix the notional income at Rs.12,000/- (Rupees Twelve Thousand only) per month. The deceased was aged 21 years at the time of accident and hence, the future prospects has to be calculated at 40%. The deceased was a bachelor at the time of accident and hence, 1/2 has to be deducted towards personal expenses. Hence, the compensation awarded by the Tribunal under the head "loss of contribution" is modified as follows: Rs.18,14,400/- [Rs.16,800 (Rs.12,000+Rs.4,800) X 12 X 18 X ½].

11.As regards the compensation under the head of loss of love and affection, it is well settled that the claimants are entitled only for Rs.40,000/- each as per the decision of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC (Sarala Verma Vs. Delhi Transport Corporation)** and affirmed in **National Insurance Company Limited Vs Pranay Sethi and Ors.**, reported in **2017 (2) TNMAC 609 (SC)**. Hence, the compensation under the head of loss of love and affection is reduced to Rs.80,000/-



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(Rupees Eighty Thousand only) from Rs.2,00,000/- (Rupees Two Lakhs only). The compensation under the other heads namely loss of estate and funeral expenses are just and reasonable and the same are hereby confirmed.

12. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation, more than the amount claimed by the claimants. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl.N o.	Description	Amount awarded by the Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of contribution to the family	12,09,600	18,14,400/-	enhanced
2.	Loss of love and affection	2,00,000/-	80,000/-	reduced
3.	Loss of Estate	15,000/-	15,000/-	confirmed
4.	Funeral Expenses	15,000/-	15,000/-	confirmed
	Total	14,39,600	19,24,400	4,48,800



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13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,39,600/- is hereby enhanced to Rs.19,24,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the modified award amount 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 shares of the award amount along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. No costs.

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Index : Yes/ No

Speaking order: Yes/ No

Neutral Citation: Yes/ No



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SUNDER MOHAN,J.

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