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C.M.A.No.2035 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

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1.Kuppu

2.Minor Velankanni

3.Minor Surya

4.Minor Saverimuthu

5.Santhappan

*(Minors 2nd to 4th appellants represented by his
mother 1st appellant herein)*

... Appellants

Vs.

1. Ramesh

2. The Divisional Manager,
The United India Insurance Company Limited,
TP Claims Hub,
No.81, Katpadi Road,
TKM Complex,
2nd Floor,
Vellore - 632 004.

3.Pushpa

*(Since R1 and R3 remained exparte before the
Tribunal, their presence may be dispensed with)*

... Respondents



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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 13.09.2019 and made in M.A.C.T.O.P.No.453 of 2018 on the file of the Motor Vehicle Accident Claims Tribunal/Special Sub Court, Tiruvannamalai.

For Appellants : Ms.Sunithi Abirami
for Ms.M.Malar

For Respondents : R1 & R3 - Exparte
Ms.R.Rathna Thara for R2

J U D G M E N T

The appellants have preferred the instant appeal seeking enhancement.

2.The appellants filed the claim petition stating that on 03.05.2018 at about 08.00 P.M., while the deceased was walking on the road, the driver of the offending vehicle insured with the second respondent came in a rash and negligent manner, dashed against the deceased and caused fatal injuries to the deceased.

3.The first respondent and the third respondent remained exparte before the Tribunal.



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4.The second respondent resisted the claim petition stating that the accident did not take place due to the negligence of the driver of the offending vehicle and that in any case, the claim made by the appellants is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellants examined the first appellant as P.W.1 and one Shankar, eye-witness as PW2 and marked 6 documents as Exhibits P1 to P6. The second respondent did not examine any witness or file any document before the Tribunal.

6.The Tribunal after considering the evidence on record held that the accident took place due to the rash and negligent act of the driver of the offending vehicle insured with the second respondent and awarded a compensation of Rs.14,38,000/- to the claimants.

7.The learned counsel for the appellants/claimants submitted that the award of Tribunal is meagre in as much as the Tribunal had fixed a very low monthly income of Rs.7,500/- although the accident took place in the year 2018 and the appellants have established the fact that deceased was a



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shoemaker and also an agricultural cooli. Therefore, he prayed for enhancement of compensation.

8.Since the first respondent and the third respondent remained exparte before the Tribunal, the learned counsel for the appellants made an endorsement that notice to the respondents 1 and 3 may be dispensed with. Hence, notice to the respondents 1 and 3 are dispensed with.

9.The learned counsel for the second respondent per contra submitted that in the absence of any evidence either to prove the avocation or the income of the deceased, the Tribunal was right in fixing the notional income of Rs.7,500/- per month and prayed for dismissal of the appeal.

10.The only question involved in the instant appeal is whether the quantum of compensation awarded by the Tribunal is just and reasonable?.

11.On perusal of records, it is seen that the appellants had established that the deceased was working as a shoe maker and also as an agricultural coolie. However, no documents have been produced either to prove the avocation or income of the deceased.



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12.Considering the avocation, age of the deceased, year of the accident and the number of dependants, this Court is of the view that it would be just and reasonable to fix the notional income of the deceased as Rs.13,000/- per month. The deceased was aged 45 years at the time of the accident and hence, the appellants would be entitled to 25% enhancement towards future prospects. The multiplier applicable is '14'. In view of the number of dependants, $1/4^{\text{th}}$ has to be deducted towards personal expenses. Hence, the award under the head loss of income has to be Rs.13,000 + Rs.3,250 = Rs.16,250 x 12 x 14 x $3/4$ =Rs.20,47,500/-.

13.The appellants 2 to 4 each would be entitled to Rs.40,000/- under the head 'loss of love and affection' and hence the same is enhanced to Rs.1,20,000/- and the award under the other heads are confirmed. Thus, the award is modified as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>	<i>Award amount enhanced or reduced or granted or confirmed</i>
1	Loss of income	13,23,000/-	20,47,500/-	Enhanced
2	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed



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<i>S.No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>	<i>Award amount enhanced or reduced or granted or confirmed</i>
3	Loss of love and affection to 2 nd , 3 rd and 4 th appellants	45,000/- (15,000x3)	1,20,000/- (Rs.40,000x3)	Enhanced
4	Loss of estate	15,000/-	15,000/-	Confirmed
5	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	14,38,000/-	22,37,500/-	Enhanced by Rs. 7,99,500/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,38,000/- is hereby enhanced to Rs.22,37,500/- 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 is directed to deposit the enhanced compensation within a period of eight (8) weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants 1 and 5 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 2nd, 3rd and 4th appellants are directed to be



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deposited in any one of the Nationalised Bank till the minor appellants attain majority. However, the 1st appellant, mother of the minors 2nd, 3rd and 4th appellant 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.

12.09.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

pam/gvn

To

1.The Motor Vehicle Accident Claims Tribunal/
Special Sub Court, Tiruvannamalai.

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



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SUNDER MOHAN, J.

gvn

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