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CMA No.2160 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2160 of 2022

- 1.Pawnambal
- 2.Prakash
- 3.Sumathi
- 4.Rajammal

... Appellants

Vs.

- 1.S.Venkatraman,
- 2.Reliance General Insurance Company Limited.,
D.No. 19, Reliance Centre,
Vaalsanth Hyrasanth Mark,
Ballart Estate, Mumbai,
Maharashtra,
Branch Office at:
Thillaipuram, Paramathi Road,
Namakkal Town, Namakkal Taluk.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 30.03.2021 made in MCOP No. 374 of 2018, on the file of MACT/Special Court for Trial of Cases registered under SC/ST (POA) Act at Namakkal.



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For Appellants : Mr. M. Lokesh

For Respondents : Mr.P.Suresh Srinivasan, for R2
R1 – Ex parte

J U D G M E N T

The instant appeal has been filed seeking enhancement of compensation.

2. The appellants filed the claim petition stating that on 10.02.2018 at about 12.00 am, while the deceased was riding his two wheeler, the driver of the offending car insured with the second respondent herein drove the same in a rash and negligent manner and dashed the vehicle of 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 stating that the accident took place only due to the negligence of the deceased and hence, they are not liable to pay compensation; and that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.



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5. The appellants examined PW.1 and PW.2 and marked Ex.P1 to P.18.

The second respondent neither examined any witness nor marked any document.

6. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a sum of Rs.11,99,200/- to the appellants.

7. The learned counsel for the appellants submitted that though the appellants had established the fact that the deceased was working as a power loom worker, the Tribunal fixed a meagre notional income of Rs.12,000/-; that the Tribunal had erroneously applied the multiplier '9'. Though the appellants had established that the deceased was aged 49 years at the time of accident and awarded only 10% enhancement towards future prospects. The learned counsel further submitted that the Tribunal had awarded a meagre sum towards loss of love and affection and prayed for enhancement of compensation.



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WEB COPY 8. Since the first respondent remained ex parte before the Tribunal, the learned counsel for the appellants made an endorsement to dispense with notice to R1.

9. The learned counsel for the second respondent per contra submitted that since the appellants had not established the avocation or income of the deceased, the Tribunal was right in fixing Rs.12,000/- as notional income. The learned counsel further submitted that the the award of compensation under other heads is just and reasonable and prayed for dismissal of the appeal.

10. The only question in the instant appeal is -

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

11. On perusal of the records, it is seen that the accident took place in the year 2018. The second appellant, the son of the deceased examined himself as PW.1 and had deposed before the Tribunal that the deceased was



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working as a power loom worker. However, no document was filed to either prove the avocation or income of the deceased. Hence, this Court is of the view that considering the age, avocation of the deceased, year of accident and the number of dependants, it would be just and reasonable to fix notional monthly income as Rs.15,000/-. It is seen from Ex.P.11, the driving license of the deceased that the deceased was born on 05.07.1968. The accident took place on 10.02.2018. Thus, the deceased was aged 49 years at the time of accident. The Tribunal, however had erroneously taken the age mentioned in the post-mortem certificate. The appellants therefore would be entitled to 25% enhancement towards future prospects. The deceased was survived by his wife, mother and two children. Hence, 1/4 has to be deducted towards his personal expenses. Therefore, the award under the head loss of dependency has to be: -

$$15,000+3750(15,000 \times 25) \times 12 \times 13 \times 3/4 = \text{Rs.}21,93,750/-.$$

The appellants 2 to 4 are each entitled to Rs.40,000/- under the head loss of love and affection. Hence, the compensation is enhanced to Rs.1,20,000/- under the said head. The compensation awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Thus, the



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compensation awarded by the Tribunal is enhanced from Rs.11,99,200/- to

Rs.23,83,750/-, 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	9,72,000/-	21,93,750/-	Enhanced
2.	Future prospects	97,200/-		
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Loss of love and affection	60,000/-	1,20,000/- (Rs.40,000/- each to the appellants 2 to 4)	Enhanced
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	11,99,200/-	23,83,750/-	Enhanced by Rs.11,84,550/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,99,200/- is hereby enhanced to Rs.23,83,750/- 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



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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. On such deposit, the first appellant, being the wife of the deceased would be entitled to Rs.12 lakhs. The 4th appellant, who is the mother of the deceased would be entitled to Rs.2 lakhs and the remaining sum shall be divided equally between the appellants 2 and 3. 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 the aforesaid apportionment fixed by this Court. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

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Index: Yes/No
Neutral Citation: Yes / No
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SUNDER MOHAN, J.

AT

To

- 1.The Motor Accident Claims Tribunal /
Special Court for Trial of Cases registered
under SC/ST (POA) Act, Namakkal.
- 2.The Section Officer,
VR Section,
High Court, Madras.

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