



CMA No. 2611 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No.2611 of 2022

1.Vijaya

2.S.Chittibabu

3.S.Saraswathi

4.S.Kamalakannan

5.S.Mohana Krishnan

... Appellants

Versus

1.P.Rampal

2.New India Assurance Company Ltd.,

6th Floor, NSC Bose Road,

Parrys,

Chennai – 600 001.

... Respondents

(The Respondent No. 1 remained absent and set

Ex-parte before the Tribunal. Hence notice may be
dispensed with for R-1 in this appeal)

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the compensation in the order in M.C.O.P. No. 3615 of 2017 dated 17.06.2022 on the file of the Motor Accident Claims Tribunal/III Small Causes Court at Chennai, with interest and cost.

For Appellants : Mr. M.Lokesh

For Respondents : R1 - Exparte



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Mr. C.Johnson (for R2)

J U D G M E N T

The appellants have filed the instant appeal seeking enhancement of compensation awarded by the Tribunal in M.C.O.P. No. 3615 of 2017 dated 17.06.2022.

2.The appellants, who are sister, brother and brother's children of the deceased, have filed the claim petition stating that on 25.12.2016 at about 18.40 hours, while the deceased was crossing the road as pedestrian, a motorcyle insured with the second respondent herein came in a rash and negligent manner and dashed against the deceased, as a result of which, the deceased sustained fatal injuries and thus, the appellants are entitled to compensation.

3.The first respondent remained exparte before the Tribunal.

4.The second respondent filed counter denying all the averments made in the claim petition stating that the accident did not take place due to the negligence of the rider of the insured vehicle and that in any case,



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the compensation claimed by the appellants is excessive and prayed for dismissal of the petition.

5.The appellants examined the first respondent as PW.1 and an eye-witness PW.2 and marked Ex.P.1 to Ex.P.15. The second respondent examined RW.1 and marked Ex.R.1 and Ex.R.2.

6.The Tribunal after considering the oral and documentary evidence, held that the accident took place due to the negligence of the rider of the insured vehicle and directed the second respondent to pay a sum of Rs. 6,63,300/- to the appellants with liberty to recover the same from the first respondent.

7.The learned counsel for the appellants submitted that the award of the Tribunal is meagre inasmuch as the Tribunal had fixed a very low notional income of Rs. 8,000/- though the appellants had established that the deceased was working as painting contractor and earning a sum of Rs. 25,000/- per month. The learned counsel further submitted that though the appellants had produced the documents, such as, ration card, post mortem certificate and A.R. copy to show that the deceased was aged 50 years, the Tribunal had accepted the age mentioned in Ex.P.10



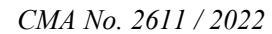
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Aadhaar card and fixed the age as 54 years and computed the compensation accordingly, which is erroneous. The learned counsel therefore, prayed for enhancement of compensation.

8. Since the first respondent remained *exparte* before the Tribunal, the learned counsel for the appellants sought permission of this Court to dispense with the notice to him and has made an endorsement to that effect. Hence, notice to the first respondent is dispensed with.

9. The learned counsel for the second respondent, *per contra*, submitted that the appellants are not dependants of the deceased. They had independent source of income and hence, the award of the Tribunal fixing the notional income after taking into consideration of all these facts need not be interfered with. The learned counsel further submitted that the Tribunal had rightly considered the age mentioned in the Aadhaar card to determine the compensation and submitted that the appeal may be dismissed.

10. The only question that arises for consideration in the instant appeal is whether the compensation awarded by the Tribunal is just and



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12.As regards the compensation, this Court is of the view that considering the avocation, age of the deceased, year of the accident and the fact that the appellants were not fully dependent on the deceased, it would be just and reasonable to fix the notional income of Rs. 11,000/- per month. Further, the age of the deceased determined by the Tribunal as 54 years based on Ex.P.10 Aadhaar card cannot be faulted. The appellants would be entitled to 10% enhancement towards future prospects and the multiplier applicable is 11. Therefore, the



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compensation under the head Loss of Dependency would be Rs.11,000 +

Rs.1100 (10% of Rs.11,000) = Rs.12,100/- X 12 X 11 X ½ =

Rs.7,98,600/-. Further, the compensation under the head loss of

consortium is meagre and the same is enhanced to Rs.88,000/-. The

award under the other heads are just and the same are confirmed. Thus,

the award of the Tribunal is modified as follows;

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	5,80,800	7,98,600	Enhanced
2.	Loss of estate	16,500	16,500	Confirmed
3.	Funeral expenses	16,500	16,500	Confirmed
4.	Loss of consortium	44,000	88,000	Enhanced
5.	Transportation expenses	5,500	5,500	Confirmed
	Total	6,63,300	9,25,100	Enhanced by Rs.2,61,800/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,63,300/- is hereby enhanced to Rs.9,25,100/- 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



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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, if not already deposited. On such deposit, the appellants are permitted to withdraw their respective shares of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn as per the apportionment fixed by the Tribunal. The appellants are further directed to pay the requisite court fee, if any, on the enhanced award amount. No costs.

13.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accident Claims Tribunal/III Small Causes Court,
Chennai.
2. The Section Officer,
VR Section,
Madras High Court,
Chennai – 600 104.



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SUNDER MOHAN, J

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Dated: 13.09.2023