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CMA No. 2707 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2707 of 2022

1. A.Saraswathi

2. P.Annamalai

... Appellants

Versus

1. M/s. TRV Cashew Company, By its Proprietor,
No. 298, Kumbakonam Road,
Kadampuliyur,
Panruti Taluk – 607 103.

2. The Divisional Manager, ICICI Lombard,
General Insurance Company Ltd.,
No.35/20-21, Pondy Cuddalore Main Road,
Periyakanganankuppam Village,
Cuddalore.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No. 1127 of 2021 dated 09.09.2022 on the file of the Motor Accidents Claims Tribunal/I Additional District and Sessions Judge (FAC), Cuddalore.

For Appellants : Mrs. Ramya V. Rao

For Respondents : Ms. A. Salomi for R2

R1 – ex parte.



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J U D G M E N T

WEB COPY The appeal has been filed challenging the award passed by the Tribunal in M.C.O.P. No. 1127 of 2021 dated 09.09.2022.

2.The appellant had filed claim petition seeking compensation before the Tribunal stating that on 05.08.2021, when the deceased was walking on Panruti to Arasur main road opposite to Ayyanarkoil, a car bearing Registration No. TN 31 CB 2727 came from West to East in a rash and negligent manner and dashed against the deceased, as a result of which the deceased sustained severe injuries and died.

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

4.The second respondent filed a counter stating that the accident occurred due to the negligence of the deceased; that the second respondent is not liable to pay compensation; and that in any case, the compensation claimed by the appellant is excessive and prayed for dismissal of the petition.



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5.The appellant examined two witnesses on her side as PW.1 and PW.2 and marked Ex.P.1 to Ex.P.10. On the side of the respondent, RW.1 was examined and Ex.R.1 was marked.

6.The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the rash and negligent driving of the driver of the car belonging to the first respondent and awarded a compensation of Rs.16,43,000/- to the appellants to be paid by the second respondent. Aggrieved by the said award, the appellant had preferred the instant appeal.

7.The learned counsel for the appellant submitted that the notional income of Rs.12,000/- fixed by the Tribunal is meagre and hence, prayed for enhancement of compensation.

8.Though notice has been served on the first respondent, none has entered appearance on its behalf.



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9.The learned counsel for the second respondent, per contra, submitted that the compensation awarded by the Tribunal is just and reasonable and no interference is called for.

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

11.It is seen from the records that the appellants have established the fact that the deceased was working as a Carpenter by examining PW1, mother of the deceased. However, no documentary proof was filed to prove the income of the deceased. In the absence of any documentary evidence, the Tribunal was justified in fixing the notional income. However, it is seen that the accident took place in the year 2021. Considering the age, avocation and the fact that the appellants are old age parents of the deceased, this Court is of the view that it would be just and reasonable to fix Rs.15,000/- per month as notional income of the deceased. Since the deceased was aged 37 years at the time of the accident, the multiplier applicable is 15 and the appellants are entitled to 40% enhancement towards future prospects. Since the deceased died as a bachelor, 50% has to be deducted towards personal expenses. Thus the



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award under the head loss of income would be Rs.15,000/- + Rs.6000/- =

Rs.21,000/- X 12 X 15 X $\frac{1}{2}$ = Rs.18,90,000/-. 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 income	15,12,000	18,90,000	Enhanced
2.	Loss of estate	16,500	16,500	Confirmed
3.	Funeral expenses	16,500	16,500	Confirmed
4.	Loss of parental consortium	88,000	88,000	Confirmed
5.	Transportation charges	10,000	10,000	Confirmed
	Total	16,43,000	20,21,000	Enhanced by Rs.3,78,000/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,43,000/- is hereby enhanced to Rs.20,21,000/- 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 award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a



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period of eight (8) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellants are permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The appellants are directed to pay the necessary court fee if any on the enhanced award amount. No costs.

08.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accidents Claims Tribunal/
I Additional District and Sessions Judge (FAC),
Cuddalore.

2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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C.M.A. No. 2707 of 2022

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