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C.M.A.No.1565 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1565 of 2022

1.S.Priya

2.Minor S.Sugesh

Rep. by his Guardian/Mother S.Priya

... Appellants

Versus

1.M.Murugavel

2.United India Insurance Company Ltd.,

Divisional Manager,

Coimbatore District.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 15.02.2022 passed in M.C.O.P.No.8 of 2017, on the file of the Motor Accident Claims Tribunal, III Additional District Court, Tiruppur, Dharapuram.

For Appellants

: Mr.D.Rameshkumar

For R2

: Mr.D.Bhaskaran



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JUDGMENT

This appeal has been filed by the appellants/claimants challenging the compensation awarded by the Tribunal in M.C.O.P.No.8 of 2017, dated 15.02.2022.

2.The claim petition was filed stating that on 19.03.2016 at about 7.45 p.m., while the 1st appellant's husband was riding a motorcycle bearing Regn.No.TN 38 AV 8790 near Lakshmi House, Muthukallur Pirivu, Velliankadu from West to East direction, another motorcycle bearing Regn No.TN 43 Z 2101, ridden by its rider in rash and negligent manner came from opposite direction and dashed against the motorcycle ridden by the husband of the 1st appellant; that due to the said accident, the 1st appellant's husband was thrown away, sustained multiple grievous injuries on his head and other parts of the body and succumbed to the injuries; that thus, the appellants are entitled for compensation.

3.The 1st respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal.



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4.The 2nd respondent/Insurance Company filed a counter denying all the averments made in the claim petition and stated that the deceased crossed the road without any intimation and invited the accident; and hence, the 2nd respondent was not liable to pay any compensation to the appellants; that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellants examined two witnesses and marked Ex.P.1 to Ex.P.12 on their side. On behalf of the 2nd respondent, two witnesses were examined and Ex.R1 to R4 were marked.

6.The Tribunal after considering the oral and documentary evidence had held that the accident occurred due to the rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and being the insurer of the 1st respondent's vehicle, directed the 2nd respondent to pay a sum of Rs.15,35,112/- as compensation to the appellants, with liberty to recover the same from the 1st respondent since the rider of the motorcycle belonging to the 1st respondent did not possess driving license at the time of accident.



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7. Aggrieved over the award passed by the Tribunal, the appellants filed the present appeal seeking for enhancement of compensation.

8. The learned counsel for the appellants submitted that the Tribunal has fixed a notional income of the deceased at Rs.10,000/- which is meagre and hence prayed for enhancement of compensation.

9. The learned counsel for the appellants further submitted that the 1st respondent remained *ex-parte* before the Tribunal and therefore, requested to dispense with notice to the 1st respondent and had also made an endorsement to that effect. Hence, notice to the 1st respondent is dispensed with.

10. The learned counsel for the 2nd respondent per contra submitted in the absence any proof for income and avocation of the deceased, the Tribunal has rightly fixed the notional income of the deceased at Rs.10,000/- and hence, prayed for dismissal for the appeal.

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



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12. On perusal of records, it is seen that the accident took place in the year 2016. The appellants have not established the exact income earned by the deceased. It is also seen that the avocation has also not been established by documentary evidence. However, PW1 in her deposition has stated that the deceased was working as a Real Estate Agent. Considering the age of the deceased, avocation and year of accident, this Court is of the view that in the facts it would be just and reasonable to fix a sum of Rs.13,000/- as notional income of the deceased. Further, the deceased is entitled to 25% enhancement towards further prospects and the multiplier applicable is 14. Since there are two dependants, after deducting 2/3 towards personal expenses, the award under the head loss of dependency would be as follows:

$$\text{Rs.16,250/- (Rs.13,000/- + 25\%) X 12 X 14 X } \frac{2}{3} = \text{Rs.18,20,000/-}$$

Further, the amount awarded by the Tribunal under the head loss of estate is excessive and the same is reduced to Rs.15,000/-. The compensation awarded by the Tribunal under other heads are just and reasonable and the same are confirmed. Thus, the compensation awarded by 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	14,00,112	18,20,000	Enhanced
2.	Loss of Estate	30,000	15,000	Reduced
3.	Loss of Consortium	80,000	80,000	Confirmed
4.	Funeral Expenses	15,000	15,000	Confirmed
5.	Transportation	10,000	10,000	Confirmed
	Total	15,35,112	19,40,000	Enhanced by Rs.4,04,888/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,35,112/- is hereby enhanced to Rs.19,40,000/-, 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 2nd respondent/Insurance Company 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 four (4) weeks from the date of a receipt of copy of this Judgment, at the first instance and thereafter, recover the same from the 1st respondent. On such deposit, the appellants are permitted to withdraw the entire award amount now determined by this Court as per the apportionment fixed by the Tribunal, along with proportionate



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interest and costs, less the amount already withdrawn, if any. The share of the minor 2nd appellant is directed to be deposited in any one of the nationalised bank till the minor attains majority. The 1st appellant-mother of the minor 2nd appellant is directed 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.

28.08.2023

rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The Motor Vehicle Accident Tribunal,
III Additional District Court,
Tiruppur, Dharapuram.

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



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SUNDER MOHAN, J.

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