



WEB COPY



C.M.A.No.505 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A. No. 505 of 2023

1.Prema
2.Dharani

... Appellants

Versus

1.Uma Maheswari
2.Shri Ram General Insurance Co.Ltd,
No.5, Ramachandra Street,
Saravanan Nagar, Seevaram,
Perungudi, Chennai 600 096.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, seeking to allow the appeal by enhancing the compensation awarded in the judgment and decree dated 28.02.2022 passed in MCOP.No.6993 of 2018 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellants	: Mr.Amar Dineshbhai Pandiya
For R1	: Notice dispensed with
For R2	: Ms.R.Sreevidhya



C.M.A.No.505 of 2023

WEB COPY

JUDGMENT

This appeal has been filed by the claimants challenging the compensation awarded by the Tribunal in MCOP.No.6993 of 2018 dated 28.02.2022.

2.The claim petition was filed stating that on 11.09.2018 at about 10.35 am, while the deceased was riding the motor cycle bearing Registration No.TN 22 F 9391 on a public road, a Lorry bearing Registration No.TN 19 U 4092, belonging to the first respondent and insured with the second respondent came in a rash and negligent manner and dashed the vehicle of the deceased from behind as a result of which, the deceased sustained fatal injuries.

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

4.The 2nd respondent/Insurance Company filed counter denying all the averments made in the claim petition and stated that the claimants have not established the avocation and income of the deceased; that their



C.M.A.No.505 of 2023

claim was excessive and hence, prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellants/claimants examined two witnesses and marked Ex.P.1 to Ex.P.20 on their side. The 2nd respondent/Insurance Company, neither examined any witness nor marked any document.

6.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by the driver of the lorry and being the insurer of the 1st respondent's lorry, directed the 2nd respondent/Insurance Company to pay a sum of Rs.19,34,400/- as compensation to the appellants/claimants.

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

8.Learned counsel appearing for the appellants submitted that for an accident that took place in the year 2016, the Tribunal had taken



C.M.A.No.505 of 2023

meagre notional income of Rs.8,000/- per month, though the appellants had established that the deceased worked as a Loan Sanction Officer at HDB Financial Services Limited. Further, the appellants had produced Ex.P17/ID card of the deceased, Ex.P18/salary slip of the deceased and Ex.P19/Bank statement of the deceased to show that the deceased earned Rs.20,000/- per month and hence, prayed for enhancement of compensation.

9. The 1st respondent remained ex-parte before the Tribunal and therefore, the learned counsel for the appellant prayed to dispense with notice to the 1st respondent and made an endorsement to that effect. Hence, the notice to the 1st respondent is dispensed with.

10. Per contra, learned counsel appearing for the 2nd respondent/Insurance Company submitted that though the appellants have produced Ex.P17 to Ex.P19, the employer of the deceased was not examined and hence, the Tribunal was right in fixing the notional income and prayed for dismissal of the appeal.



C.M.A.No.505 of 2023

11.The only question that arises in the present appeal is whether the compensation awarded by the Tribunal is just and reasonable.

12. On perusal of records, it is seen that the appellants had examined PW1/mother of the deceased to show that the deceased worked as a Loan Sanction Officer in HDB Financial Services Limited. The appellants had marked Ex.P17 to Ex.P19 to prove the avocation. According to PW1, the deceased earned Rs.20,000/- per month as salary and around Rs.9,000/- per month as incentive. It is also seen that the appellant has not examined the employer to prove the above said documents. However, considering the age and avocation of the deceased, and the year of accident, this Court is of the view that it would be just and reasonable to fix the notional income as Rs.17,000/- per month. Since the deceased was 25 years at the time of accident, 40% has to be added towards future prospects and hence, the multiplier applicable is 18% and 50% has to be deducted towards personal expenses. Hence, the Loss of Dependency has to be as follows:

Notional income : Rs.17,000/- + 6,800 (40% of 17,000) = Rs.23,800/-

Loss of Dependency : Rs.23,800 (notional income) X 12 (months) X 18 (multiplier) X $\frac{1}{2}$ (dependency) = Rs.25,70,400/-



C.M.A.No.505 of 2023

WEB COPY

13. The amount awarded by the Tribunal under other heads is just and reasonable and hence, the same is 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	18,14,400	25,70,400	Enhanced
2.	Loss of Estate	15,000	15,000	Confirmed
3.	Funeral Expenses	15,000	15,000	Confirmed
4.	Transport Expenditure	10,000	10,000	Confirmed
5.	Loss of Love and Affection	80,000	80,000	Confirmed
	Total	19,34,400	26,90,400	Enhanced by Rs.7,56,000/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.19,34,400/- is hereby enhanced to Rs.26,90,400/- 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



C.M.A.No.505 of 2023

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 appellants are permitted to withdraw their respective shares along with interest and costs, less the amount if any, already withdrawn. Further, the appellants are directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

27.09.2023

nsa

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The Subordinate Judge,
The Motor Vehicle Accident Tribunal,
III Court of Small Causes, Chennai.

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



WEB COPY



C.M.A.No.505 of 2023

SUNDER MOHAN, J.

nsa

C.M.A. No. 505 of 2023

27.09.2023