



C.M.A.No.1532 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1532 of 2023

1.Sarasu @ Saraswathi
2.Nagappan

... Appellants

Vs

1.M.Kannan

2.National Insurance Company Limited,
Motor Third Party Claims Office,
No.66, Greaves Road,
Chennai – 600 006.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.12.2021 made in M.C.O.P.No.4362/2019 on the file of the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Cuases), Chennai.

For Appellants : Ms.G.Anitha

For Respondents : Ms.N.B.Surekha, for R2
R1- Ex parte



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 08.12.2021 made in M.C.O.P. No.4362 of 2019 on the file of the Motor Accident Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai.

2. The appellants filed M.C.O.P. No.4362 of 2019 on the file of the Motor Accident Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai, claiming a sum of Rs.25,00,000/- as compensation for the death of one Ayyanar, who died in the accident that took place on 11.05.2019.

3. According to the appellants, on 11.05.2019 at about 15.50 hours, while the deceased Ayyanar was travelling as a pillion rider in the motorcycle bearing Registration No.TN-02-AV-0387 from Trichy to Chennai NH-45 road, near Olakkur Koot Road, the Tanker Lorry bearing Registration No.TN-47-AD-8422 driven by its driver in a rash and negligent



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manner, came from behind and hit the deceased Ayyanar and caused the accident; that in the above said accident, the said Ayyanar sustained grievous injuries; that immediately he was taken to Government Hospital, Tindivanam for first aid, and thereafter, he was taken to Government Hospital, Mundiyaambakkam for better treatment, where he died on 12.05.2019. Hence, the appellants filed claim petition claiming compensation against the respondents.

4. The first respondent remained *ex-parte* before the Tribunal.

5. The second respondent filed a counter statement denying all the averments made by the appellants in the claim petition. According to the second respondent, the driver of the first respondent did not possess a valid and effective license to drive the same at the time of accident; that hence, the second respondent is not liable to pay the compensation; and that in any event the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.



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6. The 1st appellant / mother of the deceased examined herself as P.W.1 and one Jayakumar, eye-witness to the accident was examined as P.W.2. Eleven documents were marked as Ex.P.1 to Ex.P.11. The second respondent, did not examine any witness or marked any document.

7. The Tribunal after considering the evidence and documents filed on the side of the appellants, held that the accident occurred due to rash and negligent driving by the driver of the first respondent and directed the respondents 1 and 2, jointly and severally to pay a sum of Rs.11,90,000/- as compensation to the appellants.

8. Aggrieved by the said order, the appellants have preferred the present appeal seeking enhancement of compensation.

9. The learned counsel for the appellants submitted that the claimants had established that the deceased was working as a Mason through the evidence of P.W.1. However, the Tribunal had taken a notional income of Rs.60,000/- per annum. The learned counsel therefore prayed for enhancement of compensation.



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10. Though notice has been served on the first respondent and his name is printed in the cause list, none appeared for him.

11. Per contra, the learned counsel for the second respondent / Insurance Company submitted that the appellants have not produced any documents to prove the avocation and income of the deceased. In such circumstances, the Tribunal had rightly fixed the notional income at Rs.60,000/- per annum and hence, prayed for dismissal of the appeal.

12. The only question involved in the instant appeal is-
Whether the quantum of compensation awarded by
the Tribunal is just and reasonable?

13. The Tribunal examined the mother of the deceased as PW.1. She in her deposition had stated that the deceased who was aged 17 years at the time of accident was working as a Mason and earning Rs.600/- per day. No independent witness was examined to substantiate the income of the deceased. Considering the age of the deceased, his avocation and the year



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of accident, this Court is of the view that the notional income can be fixed at Rs.10,000/- per month. The appellants are entitled to 40% enhancement towards future prospects. Since the deceased was bachelor at the time of accident, 50% has to be deducted towards personal expenses. Thus, the compensation under the head loss of dependency has to be calculated as follows:- $10,000 + 4,000(10,000 \times 40\%) \times 12 \times 18 \times 1/2 = 15,12,000/-$.

14. The compensation awarded by the Tribunal under other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.11,90,000/- to Rs.16,22,000/-, break-up 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	10,80,000/-	15,12,000/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Loss of consortium	80,000/-	80,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000	Confirmed
	Total	11,90,000/-	16,22,000/-	Enhanced by Rs.4,32,000/-



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15. With the above modification, this Civil Miscellaneous Appeal

is partly allowed and the compensation awarded by the Tribunal at Rs.11,90,000/- is hereby enhanced to Rs.16,22,000/- 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 / 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 six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, 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 apportionment fixed by the Tribunal. 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 Accidents Claims Tribunal
(Chief Judge, Court of Small Cuases), Chennai.

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

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