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C.M.A.No.2115 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2115 of 2023

1.Poongodi

2.Minor Karthikeyan

3.Minor Monish

4.Arukkani

5.Perumal

*(The 2nd & 3rd minor appellants are rep. by their
Next friend/guardian/mother Poongodi)*

... Appellants

Vs.

1.Manoharan

2.The National Insurance Co., Ltd.,
2nd Floor, 81-A, North Car Street,
Tiruchengode Taluk, Namakkal District.

3.The National Insurance Co., Ltd.,
Parimalam Complex, 2nd Floor,
EVN Road, Erode - 638 011.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.01 of 2018, dated 02.06.2020, on the file of the Motor Vehicle Accident Claims Tribunal/Special District Judge, Erode.

For Appellants	: Mr.T.S.Arthanareeswaran
For Respondents	: R1 – Exparte Mr.D.Bhaskaran for R2



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J U D G M E N T

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The claimants have filed the instant appeal seeking enhancement of compensation.

2.The appellants filed the claim petition stating that on 15.08.2017 at about 09.05 A.M., when the deceased was riding his Two-wheeler, the offending vehicle insured with the second respondent herein came in a rash and negligent manner and caused the accident which resulted in fatal injuries to the deceased.

3.The first respondent remained exparte before the Tribunal.

4.The second respondent resisted the claim petition stating that the accident took place only due to the negligence of the deceased and in any case, the claim made by the appellants/claimants is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellants examined 4 witnesses as P.W.1 to P.W.4 and marked 19 documents as Exhibits P1 to P19. On the side of the respondents, 2 witnesses were examined as R.W.1 and R.W.2 and 3



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documents were marked as Exhibits R1 to R3.

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6.The Tribunal after considering the oral and documentary evidence, determined the compensation payable by the second respondent as Rs.21,96,000/-. However, since the appellants restricted the claim to Rs.10,00,000/-, awarded a compensation of Rs.10,00,000/-.

7.The learned counsel for the appellants submitted that the Tribunal ought to have awarded to Rs.21,96,000/- as determined by it as compensation and ought not to have restricted to Rs.10,00,000/-, as the Tribunal has to award a just and reasonable compensation. The learned counsel for the appellants relied upon a judgment of the Hon'ble Supreme Court in ***Meena Devi vs. Nunu Chand Mahto @ Nemchand Mahto & Ors.*** reported in ***2022 Live Law (SC) 841***, wherein the Hon'ble Supreme Court had held in a similar case, that less valuation made in the claim petition would not be an impediment to award just compensation.

8.Since the first respondent remained exparte before the Tribunal, the



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learned counsel for the appellants made an endorsement that notice to the first respondent may be dispensed with. Hence, notice to the first respondent is dispensed with.

9.The learned counsel for the second respondent per contra submitted that in view of the restriction of the claim made by the appellants, the Tribunal was right in awarding the compensation, no interference is called for and hence prayed for dismissal of the appeal.

10.Heard the learned counsel for the appellants as well as the respondents and perused the materials available on record.

11.The only question involved in this appeal is whether the Tribunal was right in awarding Rs.10,00,000/- as compensation merely because the appellants have restricted their claim to Rs.10,00,000/-.

12.On perusal of the award of the Tribunal, it is seen that the Tribunal had determined the compensation payable to the appellants as Rs.21,96,000/-. It is trite law that the Tribunal has to award just and



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reasonable compensation notwithstanding the claim made by the claimants.

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This position of law has been reiterated by the Hon'ble Supreme Court of India reported in **2022 LiveLaw (SC) 801**. The relevant paragraph is extracted hereunder for better understanding:

14.At this stage, it is necessary to clarify that as per the decision of a Three-Judge Bench of this Court in Nagappa vs. Gurdayal Singh and others (2003) 2 SCC 274, it was observed that under the MV Act, there is no restriction that the Tribunal/Court ought to award 'just' compensation which is reasonable in the facts relying upon the evidence produced on record. Therefore, less valuation, if any, made in the Claim Petition would not be impediment to award just compensation exceeding the claimed amount.

13.Therefore, in view of the above settled position of law, this Court is of the view that the award of the Tribunal granting Rs.10,00,000/- as compensation to the appellants is liable to be set aside. The appellants are entitled to Rs.21,96,000/- as determined by Tribunal. The direction to the second respondent pay the compensation at the first instance and then



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recover it from the first respondent is confirmed.

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14.With the above modification, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.10,00,000/- is hereby enhanced to Rs.21,96,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. No costs.

15.The second respondent is directed to deposit the award amount, now determined by this Court, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of a copy of this judgment. On such deposit, the first appellant shall be entitled to Rs.12,00,000/-, the second and third appellants shall be entitled to Rs.4,00,000/- each, the fourth and fifth appellants shall be entitled to Rs.98,000/- each. The appellants 1, 4 & 5 are permitted to withdraw their share of the award amount along with proportionate interest and costs. The share of the minor appellants 2 & 3 are directed to be deposited in any one of the Nationalised Bank till the minors attain majority. The 1st appellant mother of the minors is permitted to withdraw the accrued interest once in 3



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months. The appellants are directed to pay the necessary Court Fee, if any,
on the enhanced award amount.

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Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
pam/gvn

To

- 1.The Motor Vehicle Accident Claims Tribunal/
Special District Judge,
Erode.
- 2.The Section Officer,
VR Section,
Madras High Court.



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SUNDER MOHAN, J.

gvn

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