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C.M.A.No.1426 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1426 of 2022

M.K.Mohanreddy

... Appellant

Versus

1.P.Vijayaraj

2.The Manager,
Royal Sundaram Allianz Insurance
Company Limited,
Sundaram Towers,
No.45 and 46 Whites Road,
Chennai -14.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 29.02.2012 passed in M.C.O.P.No.910 of 2007, on the file of the Motor Accident Claims Tribunal, Principal District Court, Tiruvallur.

For Appellant

: Mr.M.Lokesh

For R2

: Mr.E.Rajadurai
for Ms.C.Harini



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JUDGMENT

WEB COPY This appeal has been filed by the appellant/claimant challenging the compensation awarded by the Tribunal in M.C.O.P.No.910 of 2007, dated 29.02.2012.

2.The claim petition was filed stating that on 15.07.2006 at about 21.15 hours, when the appellant was walking on the Kovai to Avinasi road near Ganapathi mess, the lorry bearing Regn No.KA 01 B 2026 driven by its driver in a rash and negligent manner suddenly came in reverse, hit against the appellant's son and the back wheel of the lorry ran over him, due to which, the appellant's son sustained grievous injuries and succumbed to the injuries. Thus, the appellant was entitled for compensation.

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

4.The 2nd respondent/Insurance Company filed a counter denying all the averments made in the claim petition and stated that the accident took place only due to the negligence of the deceased. Hence, the 2nd



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respondent was not liable to pay compensation to the appellant and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellant examined himself as P.W.1, an eye witness as P.W.2 and marked Ex.P.1 to Ex.P.4 on his side. The 2nd respondent neither examined any witness nor filed 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 offending vehicle viz., the lorry and awarded a compensation of Rs.3,02,000/- to the appellant, payable by the respondents.

7.Aggrieved over the award passed by the Tribunal, the appellant has filed the present appeal challenging the quantum of compensation.

8.The learned counsel for the appellant submitted that the award of the Tribunal is erroneous since future prospects was not considered and wrong multiplier had been adopted. That apart, the Tribunal had not awarded compensation under the heads loss of love and affection, loss of



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estate and funeral expenses and thus, prayed for allowing the appeal.

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9.Since the 1st respondent remained *ex-parte* before the Tribunal, the appellant had filed a verified petition to dispense with notice to the 1st respondent. Hence, notice to the 1st respondent is dispensed with.

10.The learned counsel per contra submitted that the award of the Tribunal is just and reasonable and thus, the same does not call for any interference and the appeal is liable to be dismissed.

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

12.On perusal of records, this Court finds that considering the fact that the deceased was working as machine operator in a private concern, the Tribunal had rightly fixed Rs.4,500/- per month as notional income for the accident took place in the year 2006. However, the Tribunal had not considered the future prospects. The deceased was aged about 24 years at the time of accident and hence, entitled to 40% enhancement towards future prospects. Since the deceased was bachelor, after



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deducting 1/2 towards personal expenses, the dependency is calculated as follows:

$$\text{Rs.6300/-} - (4500 + 40\%) \times 12 \times 18 \times 50/100 = \text{Rs.6,80,400/-}.$$

Further, the Tribunal has not awarded any amount towards loss of love and affection to the appellant-father of the deceased. Therefore, this Court awards a sum of Rs.40,000/- towards loss of love and affection. The Tribunal had awarded a meagre sum of Rs.5,000/- towards transportation and funeral expenses. Hence, the same is set aside and a sum of Rs.15,000/- each is awarded under the head funeral expenses and loss of estate. 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.	Dependency	2,97,000	6,80,400	Enhanced
2.	Transportation and Funeral Expenses	5000	-	Set aside
3.	Loss of estate	-	15,000	Granted
4.	Funeral Expenses	-	15,000	Granted
5.	Loss of love and affection	-	40,000	
	Total	3,02,000	7,50,400	Enhanced by Rs.4,48,400/-



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13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,02,000/- is hereby enhanced to Rs.7,50,400/- 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 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 appellant is permitted to withdraw the entire amount awarded by this Court along with interest and cost, less amount already withdrawn, if any. The appellant is directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

22.08.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To:

- 1.The Motor Accident Claims Tribunal,
Principal District Court, Tiruvallur.
- 2.The Section Officer,
VR Section, High Court, Madras.



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SUNDER MOHAN, J.

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