



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.08.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1437 of 2022

1.Loganayagi
2.Priyavidya
3.Minor Udayamkumar
4.Minor Manju
5.Minor Kannagi
6.Minor Gokulkrishnan
Minors represented by their mother Loganayagi
7.Annammal
8.Govindasamy (Died) ... Appellants

Vs.

1.T.G.Ashokkmar
2.Reliance General Insurance Company Limited,
House No.629, Annasalai,
Teynampet, Chennai - 600 018. ... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.12.2011 in MCOP.No.1106 of 2009 on the file of the Motor Accident Claims Tribunal/ Additional District Judge, FTC No.III, Tiruvallur.

For Appellant : Mr.M.Lokesh

For Respondents : Mr.P.Suresh Srinivasan for R2

No appearance for R1



J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant challenging the quantum of compensation awarded by the Tribunal in MCOP.No.1106 of 2009, dated 02.12.2011, on the file of the Motor Accident Claims Tribunal/ Additional District Judge, FTC No.III, Tiruvallur.

2. The appellants are the claimants in MCOP.No.1106 of 2009 on the file of the Motor Accident Claims Tribunal/ Additional District Judge, FTC No.III, Tiruvallur. They filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the death of Ramakrishnan, who died in the accident that took place on 27.02.2009.

3. According to the appellants, on 27.02.2009 at about 03.00 p.m. while the deceased was proceeding to Tiruvallur in a two wheeler bearing Registration No.TN-20-L-3306, on the extreme left side of the road and was nearing Othapai Bridge, the driver of the mini lorry belonging to the first respondent bearing Registration No.TN-3o-F-5618 drove the same in a rash and negligent manner without observing the Traffic Rules and dashed against the two wheeler of the deceased. Due to the said impact, the



deceased died on the spot. Therefore, the appellants filed the claim petition claiming a sum of Rs.8,00,000/- as compensation.

4. The first respondent, the owner of the offensive vehicle, remained *ex-parte* before the Tribunal.

5. The second respondent/Insurance Company filed counter statement denying all the averments made in the claim petition and stated that the accident did not happen due to the rash and negligent driving by the driver of the mini lorry bearing registration No.TN-3o-F-5618; they denied the age, income; stated that the driver-cum-owner of the mini lorry was not possessing a heavy motor vehicle endorsement to drive the vehicle; that he had only a light motor vehicle endorsement; and that in any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellants examined P.W.1 to P.W.3 and marked five documents as Exs.P1 to P5. On the side of the second respondent/ Insurance Company neither oral nor documentary evidence was adduced.



7. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to the rash and negligent the act of driver of the first respondent's vehicle and directed the second respondent being the insurer of the offending vehicle to pay a sum of Rs.6,00,000/- as compensation to the appellants. Aggrieved over the said award, the appellants have preferred the instant appeal.

8. The learned counsel for the appellants submitted that the appellants have established that the deceased was working as a Head Mason and had examined P.W.3 to prove the avocation and income of the deceased. P.W.3 has deposed that the deceased was earning a sum of Rs.12,000/- per month at the time of accident. However, the Tribunal had erroneously taken the notional income of the deceased as Rs.4,500/- per month. The compensation awarded under different heads are also meagre. The Tribunal failed to award any amount towards loss of estate. Hence, the learned counsel prayed for enhancement of compensation.

9. Though notice was served on the first respondent, none had entered appearance on his behalf before this Court.



10. Per contra, the learned counsel for the second respondent/Insurance Company submitted that though P.W.3 was examined on the side of the appellants and no documentary evidence was produced to prove the income of the deceased. The Tribunal therefore, rightly fixed the notional income at Rs.4,500/- per month. The award of the Tribunal, therefore, does not call for any interference and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent/Insurance Company and perused all the materials available on record before this Court.

12. The only question involved in this case is whether the compensation awarded by the Tribunal is just and reasonable.

13. On perusal of the records, it is seen that the appellants examined P.W.3 to show that the deceased was working as a Head Mason and earning a sum of Rs.12,000/- per month. However no documents have been filed to corroborate this evidence. Therefore, the Tribunal was right in



fixing the notional income. However, the Tribunal erred in fixing the meagre income of Rs.4,500/- per month. Considering the age, avocation and the year of accident, this Court is of the view that it would be just and reasonable to fix Rs.7,000/- per month as the notional income of the deceased. The deceased is entitled to 25% towards future prospects. The Tribunal had taken the age of the deceased as 39 years. However, this Court finds that in the postmortem report, the age of the deceased is shown as 45 years. Further, Ex.P.5 the legal heirship certificate shows that the first appellant/wife of the deceased was aged about 40 years at the time of the accident. Considering the above facts, this Court is of the view that the Tribunal ought to have taken 45 years as the age of the deceased. Hence, the multiplier applicable is 14. In view of the number of dependants, $\frac{1}{5}^{\text{th}}$ has to be deducted towards his personal expenses. Thus, the compensation under the head "Loss of income" is calculated as follows:- Rs.7,000/- + Rs.1,750/- $(25\% \times 7,000) \times 12 \times 14 \times \frac{4}{5} = \text{Rs.11,76,000/-}$. The award of compensation under the other heads are just and reasonable and no interference is called for. On perusal of the records, it reveals that the Tribunal has not awarded any compensation under the head "Loss of Estate" and therefore, the claimants are entitled to a sum of Rs.15,000/-.



15. 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 or reduced
1.	Loss of income	5,40,000	11,76,000	Enhanced
2.	Funeral Expenses	5,000	15,000	Enhanced
3.	Loss of consortium to the first petitioner	30,000	30,000	confirmed
4.	Loss of love and affection	25,000	25,000	confirmed
5.	Loss of estate	-	15,000	granted
	Total	Rs.6,00,000/-	Rs.12,61,000/-	Enhanced by Rs.6,61,000/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,00,000/- is hereby enhanced to Rs.12,61,000/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. The first appellant/ wife of the deceased is entitled to a sum of Rs.9,11,000/-. The appellants 2 to 6, who are the son and



daughters of the deceased are entitled to a sum of Rs.75,000/- each and the seventh appellant, who is the mother of the deceased is entitled to a sum of Rs.50,000/- of the award amount. The second respondent/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the award amount along with interest and costs, after adjusting the amount if any, already withdrawn. It is made clear that the appellants are not entitled for any interest for the delay period, on the enhanced amount of Rs.6,61,000/-, as per the order of this Court, dated 22.04.2022 in C.M.P.No.18515 of 2021 in C.M.A.SR.No.40700 of 2013 and C.M.P.No.8413 of 2022 & M.P.No.1 of 2013 in C.M.A.SR.No.40700 of 2013 filed to set aside the order of dismissal for default and to condone the delay of 306 days in filing the C.M.A.SR.No.40700 of 2013. No costs.

09.08.2023

Index: Yes/No

Internet: Yes/No

Speaking order: Yes/ No

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To

1.The Additional District Judge, FTC No.III,
Motor Accident Claims Tribunal,
Tiruvallur.

2.The Section Officer
VR Section
High Court of Madras, Chennai – 600 104.



SUNDER MOHAN,J.

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