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C.M.A.No.1471 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A. No. 1471 of 2022

1.Anupriya
2.Kaliammal
3.Sarathkumar
4.Minor S.Devika,
Represented by Mother/second appellant

... Appellants

Versus

1.V.K.Rangaraj
2.Umamaheswari
3.The Branch Manager,
Shriram General Insurance Co. Ltd.,
E-8, Rico Industrial Area,
Sitapura, Jaipur, Rajasthan State.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, seeking to allow the appeal by enhancing the award and decree dated 13.08.2015 made in MCOP.No.192 of 2013 passed by the motor accident claims tribunal, Subordinate Judge, Perundurai as prayed for in this appeal with cost.



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For Appellants : Mr.R.Nalliyappan
For R1 & R2 : Dispensed with
For R3 : Mr.S.Dakshnamoorthy

JUDGMENT

This appeal has been filed by the claimants challenging the compensation awarded by the Tribunal in MCOP.No.192 of 2013, dated 13.08.2015.

2.The claimant/appellant filed the claim petition stating that on 08.03.2013, at about 6.30 p.m., while the deceased was riding a two wheeler bearing Registration No.TN 37 J 7476, a Lorry bearing Reg.No.TN 27 D 1528, belonging to the second respondent and insured with the third respondent came in a rash and negligent manner and dashed against the deceased. Due the said accident, the deceased sustained fatal injuries. Thus, the appellants are entitled for compensation.

3.The first and second respondents remained *ex-parte* before the Tribunal.



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4.The 3rd respondent/Insurance Company filed 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 and in any case, the compensation claimed is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellants/claimants examined witnesses PW1 to PW5 and marked Ex.P.1 to Ex.P.30 on their side. On behalf of the 3rd respondent/Insurance Company, no witness was examined and no document was marked.

6.The Tribunal after considering the oral and documentary evidence had held that the accident occurred due to rash and negligent driving by the driver of the lorry and being the insurer of the said lorry, directed the 3rd respondent/Insurance Company to pay a sum of Rs.11,59,799/- to the appellants/claimants.



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

8. Learned counsel appearing for the appellants submitted that the deceased was aged about 22 years and was working as Labour Contractor. However, the Tribunal had taken the notional income of the deceased as Rs.5,000/- per month, which is meagre and requires interference. Further, the learned counsel submitted that the Tribunal has not awarded compensation under the head “Loss of Love and Affection” and hence, prayed for allowing this appeal.

9. The respondents 1 and 2 remained ex-parte before the Tribunal and therefore, the learned counsel for the appellant prayed to dispense with notice to the respondents 1 and 2 and made an endorsement to that effect. Hence, the notice to the respondents 1 and 2 is dispensed with.

10. Per contra, learned counsel appearing for the 3rd respondent/Insurance Company submitted that in the absence of any evidence to prove the avocation and income of the deceased, the Tribunal



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has rightly fixed the notional income as Rs.5,000/- per month and hence, no interference is required. Further he submitted that the Tribunal had deducted 20% towards contributory negligence on the deceased, since he did not wear helmet and hence prayed for dismissal of the appeal.

10.The questions involved in the present appeal is as follows:

- a) Whether the Tribunal is right in fixing 20% contributory negligence on the deceased?
- b) Whether the compensation awarded by the Tribunal is just and reasonable ?

11.As regards the first question, it is seen that the evidence adduced on the side of the appellants shows that the accident took place only due to the negligence of the driver of the lorry, which is insured with the third respondent. The Tribunal had fixed 20% contributory negligence, since the deceased did not wear helmet at the time of accident. On considering the facts and circumstance of the case, it would be just and reasonable to fix 10% contributory negligence on the deceased for the said violation.



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12.As regards the compensation, this Court is of the view that the appellants had established that the deceased worked as a Labour Contractor and have produced Ex.P23 to Ex.P30 to prove the avocation and income of the deceased. However, this Court is of the view that the said documents do not indicate the exact income earned by the deceased. 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 notional income as Rs.12,000/- per month. The deceased was aged about 22 years at the time of accident and hence, the appellants are entitled for 40% enhancement towards future prospects, which has to be calculated as follows:

$$\begin{aligned} &\text{Rs.12,000/- (notional income) +} \\ &\text{Rs.4,800/- (40\% of notional income) = Rs.16,800/-} \end{aligned}$$

Hence, the Loss of dependency has to be calculated as follows:

$$\begin{aligned} &\text{Rs.16,800/- (notional income) * 12 (months) * 18 (multiplier)} \\ &\text{* 2/3 (dependency, since 1/3 has to be deducted towards personal} \\ &\text{expenses) = Rs.24,19,200/-} \end{aligned}$$

13. Further, since the wife and mother alone can be treated as dependents, the compensation awarded by the Tribunal under the head “Loss of Love and Affection” and “Loss of Consortium” requires



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interference. The first appellant is entitled for a sum of Rs.40,000/- towards loss of consortium and the second appellant is entitled for a sum of Rs.40,000/- towards Loss of Love and Affection. The compensation awarded under the other heads are just and reasonable and requires no interference. 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	6,12,000 after deducting 20% towards contributory negligence	21,77,280 after deducting 10% towards contributory negligence	Enhanced
2.	Funeral Expenses	10,000	10,000	Confirmed
3.	Loss of Love and Affection	40,000	40,000	Confirmed (only to second appellant)
4.	Consortium	25,000	40,000	Enhanced (only to first appellant)
5.	Medical Expenses	4,62,799	4,62,799	Confirmed
6.	Transport to Hospital	10,000	10,000	Confirmed
	Total	11,59,799	27,40,079	Enhanced by Rs.15,80,280/-



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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.11,59,799/- is hereby enhanced to Rs.27,40,079/- 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 3rd 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 2nd appellant is entitled to withdraw 30% of the amount and the 1st appellant is entitled to withdraw 70% of the amount. It is submitted that the award amount has already been deposited and the appellants had withdrawn the said amount. Hence, the above proportion is only in respect of the enhanced amount. 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

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To:

- 1.The Subordinate Judge,
The Motor Vehicle Accident Tribunal,
Perundurai.
- 2.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

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