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C.M.A. No.2144 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.2144 of 2022

1.Sarasu
2.Komathi
3.Magesh

...

Appellants

Vs.

1. Ramadoss
2.United India Insurance Co. Ltd.,
No.48, Arcot Road,
Saligramam, Chennai – 93.

...

Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act against the decree and judgment dated 07.06.2018 passed in MCOP No.171 of 2012 on the file of Motor Accident Claims Tribunal cum II Additional District Judge, Poonamallee.

For Appellants : Mr. Amar D. Pandiya

For Respondents : Mr.D.Bhaskaran for R2
R1 – unclaimed.



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JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the quantum of compensation awarded by the Tribunal in the award dated 07.06.2018 made in M.C.O.P. No.171 of 2012 on the file of the Motor Accident Claims Tribunal cum II Additional District Judge, Poonamallee.

2. The appellants filed the above claim petition claiming a sum of Rs.8,00,000/- as compensation for the death of one Ramudu, who died in the accident that took place on 29.10.2011.

3. According to the appellants, on the date of accident, while the deceased was riding his bicycle towards Arakonam to Kancheepuram, opposite to winterpet water bank at Arakonam, a lorry bearing Regn.No.TN45 Y 2905 driven by its driver in a rash and negligent manner hit against the deceased; that in the said accident, the deceased sustained grievous head injuries and died on the same day. Hence, the appellants filed claim petition claiming compensation against the respondents.



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4. The 1st respondent remained exparte before the Tribunal.

5. The 2nd respondent filed counter statement denying the averments made in the claim petition. It is stated that the accident occurred due to the negligent act of the deceased who suddenly came from left lane and turned right, uncontrolled, fell down and sustained injury; that the first respondent is not responsible for the accident; that the second respondent is not liable to pay compensation. They also denied the age, occupation and income of the deceased ; that the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st appellant examined herself as PW1 and eye-witness to the accident as PW2. Six documents were marked as Exs.P1 to P6. On the side of the second respondent, neither document was marked nor witness was examined.



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7. The Tribunal, considering the oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the first respondent and directed the second respondent, being the insurer of the lorry to pay a sum of Rs.5,98,000/- 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 appearing for the appellants submitted that the compensation awarded by the Tribunal is meagre in as much as the Tribunal had fixed the notional income at Rs.7,500/- per month, although the appellants had established that the deceased was earning a sum of Rs.12,000/- per month by selling sweets (soan papadi). The learned counsel further submitted that the Tribunal ought to have awarded compensation towards loss of love & affection to the appellants 2 & 3; that the Tribunal ought not to have applied multiplier 8 though the appellants had proved through



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postmortem certificate that the deceased was aged 54 years at the time of accident and hence the learned counsel prayed for enhancement of compensation.

10. Though notice has been sent to the first respondent, it has been returned as “unclaimed”. Hence, notice to the first respondent is dispensed with.

11. The learned counsel for the second respondent, per contra submitted that the award of compensation is just and reasonable and no interference is called for and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellants as well as second respondent and perused the materials available on record.

13. The only issue involved in this appeal is whether the compensation awarded by the Tribunal is just and reasonable.



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14. From the materials on record, it is seen that though the appellants have established the avocation of the deceased through evidence of PW1, they have not produced any proof to establish the income of the deceased. Considering the age, year of accident and the avocation, this Court is of the view that it would be just and reasonable to fix the notional income of the deceased as Rs.9000/- per month. The appellants had stated in the claim petition that the deceased was aged 55 years at the time of accident. Ex.P3 – postmortem certificate indicates the age of the deceased as 54 years. Ex.P4- death certificate indicates the age of the deceased as 55 years. Hence, the appellants are entitled to 10% enhancement towards future prospects. The multiplier applicable is 11. However, the Tribunal had erroneously taken the multiplier 8 instead of 11. Thus, the compensation towards loss of income is calculated as follows -

$$9000 + 900 (9000 \times 10\%) \times 12 \times 11 \times 2/3\% = \text{Rs.8,71,200/-}$$

The Tribunal had also not awarded any amount towards loss of love and affection to the appellants 2 and 3 who are the daughter and son of the deceased. The appellants 2 & 3 are entitled to a sum of Rs.40,000/- each



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towards loss of love and affection. The compensation awarded by the Tribunal under other heads is just and reasonable and hence the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified 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 income	5,28,000/-	8,71,200/-	Enhanced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of love & affection to appellants 2 & 3	-	80,000/- (Rs.40000x2)	Granted
	Total	5,98,000/-	10,21,200/-	Enhanced by Rs.4,23,200/-

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,98,000/- is hereby enhanced to Rs.10,21,200/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. Out of the award amount now determined by this Court, the 1st appellant is entitled to Rs.7,21,200/- and the appellants 2 &



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3 are entitled to a sum of Rs.1,50,000/- each. The 2nd 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 this Court. It is made clear that the appellants are not entitled for interest for the delay period on the enhanced amount of Rs.4,23,200/-, as per the order of this court dated 19.09.2022 in CMP No.13618 of 2022 in CMA SR No.119986 of 2018. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

29.08.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN, J

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To

1.The Additional District Judge,
Motor Accident Claims Tribunal,
Poonamallee.

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

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Dated: 29.08.2023