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C.M.A.No.2475 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2475 of 2023

1. K.Parameswari
2. K.Gopinath
3. K.Jayabharathi

.. Appellants

Vs.

1. M.Loganathan
(1st Respondent remained
ex-parte)
2. Reliance General Insurance Co.Ltd.,
Reliance House, 6th Floor,
No.6, Haddows Road, Nungambakkam,
Chennai- 600 034.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.12.2021 made in M.A.C.T.O.P.No.1459 of 2016 by the II Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.



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For Appellants : Mr.M.Mahendran
for Mr.R.Kalai Arasan
For Respondents : Mr.P.Suresh Srinivasan (R2)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 16.12.2021 made in M.A.C.T.O.P.No.1459 of 2016 on the file of the Motor Accident Claims Tribunal(II Small Causes Court), Chennai.

2. The appellants are the claimants in M.A.C.T.O.P.No.1459 of 2016 on the file of *Motor Accidents Claims Tribunal (II Small Causes Court), Chennai*. They filed the above said claim petition, claiming a sum of **Rs.25,00,000/-** as compensation for the death of one Kumaravel, who died in an accident that took place on 15.07.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of **Rs.15,22,000/-** as



compensation to the appellants and thereafter recover the same from the 1st

Respondent, who is the owner of the motorcycle.

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4. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5. The learned counsel for the appellants contended that the accident took place in the year 2015 and at the time of accident the deceased K.Kumaravel was an electrician and was earning a sum of Rs.35,000/- per month, but the Tribunal has fixed only a sum of Rs.15,000/- as monthly income of the deceased, while determining the compensation towards Loss of Dependency, which is very low. He further submitted that the compensation awarded by the Tribunal under other heads is also very low and the same needs to be enhanced.

6. Per contra, learned counsel appearing for the 2nd respondent- Insurance Company contended that since the appellants have not filed any documentary evidence in order to prove that the deceased was earning a sum



of Rs.35,000/- per month, the Tribunal, by taking note of the year of accident and the experience of the deceased as electrician and also considering Exs.P4 to P8 has rightly fixed the notional monthly income of the deceased at Rs.15,000/- and the same is reasonable. He further submitted that the total compensation awarded by the Tribunal under various heads is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

8. It is the case of the appellants that at the time of accident the deceased was aged 53 years and was an Electrician, earning a sum of Rs.35,000/- per month. Though P.W.3-Mr.Jeyavel who was an electrician deposed that deceased was earning a sum of Rs.35,000/- at the time of accident, but no documents have been filed to that effect. That apart, income of Rs.35,000/- by the deceased would have definitely attracted income tax, as he would fall within the taxable income, which could have formed the basis



for this Court to fix his monthly income. However, in the absence of any return being filed for the income earned, notional income has been fixed by the Tribunal, which cannot be said to be erroneous.

Insofar as compensation under the head Loss of Consortium to the wife, it is seen that no amount has been awarded under the said head to the 1st Appellant. Accordingly, this Court awards a sum of Rs.40,000/- is awarded under the head Loss of Consortium.

9. The Tribunal has awarded a sum of Rs.40,000/- under the head Love and Affection which in the opinion of this Court is very low as each child is entitled to a sum of Rs.40,000/- and, therefore, the same is enhanced to Rs.80,000/-. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. 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	14,52,000/-	14,52,000/-	Confirmed



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
	dependency			
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	Loss of Love and Affection	40,000/-	80,000/-	Enhanced
4.	Loss of Consortium	NIL	40,000/-	Granted
5.	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total	Rs.15,22,000/-	Rs.16,02,000/-	Enhanced by Rs.80,000 /-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,22,000/- is hereby enhanced to Rs.16,02,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The Claimants are entitled to the compensation as apportionment made by the Tribunal. 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 weeks* from the date of receipt of a copy of this judgment to the credit of **M.C.O.P.No.1459 of 2016** on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes,



Chennai. On such deposit being made, the Tribunal is directed to transfer the

Award amount, as apportioned by the Tribunal, directly to the Bank account of the Appellants/Claimants through RTGS, within a period of **three weeks**.

The 2nd Respondent-Insurance Company is at liberty to recover the compensation deposited from the 1st respondent, the owner of the two wheeler in the manner known to law. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation. However, it is made clear that if there is any delay in filing the C.M.A. and in case of any earlier order by this Court, depriving interest for the period of delay in question, the interest portion for that period should be excluded for the purpose of granting interest. No costs.

19.01.2024

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Index : Yes / No

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To

1. Reliance General Insurance Co.Ltd.,
Reliance House, 6th Floor,
No.6, Haddows Road, Nungambakkam,
Chennai- 600 034.
2. The Motor Accident Claims Tribunal,
(II Court of Small Causes), Chennai
.
- 3.The Section Officer,
VR Section,
High Court,
Madras.



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KRISHNAN RAMASAMY, J.

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