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C.M.A(MD)No.512 of 2024

**BEFORE THE MADURAI BENCH OF MADRAS HIGH
COURT**

DATED :06.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.512 of 2024

1.Sundararajan
2.Minor.Dev James
(Minor petitioner represented
through her father and next
guardian 1st petitioner herein) ... Appellants/Petitioners

Vs.

1.Mahendran
2.HDFC ERGO General Insurance Company Limited,
Through its Branch Manager,
3rd Floor, Thiripura Arcade,
No.75A, Trivandrum High Road,
Palayamkottai,
Tirunelveli. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award made in MCOP No. 1437 of 2018 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge), Tirunelveli, dated 06.04.2022.

For Petitioner : Mr.T.Selvakumaran
For R2 : Mr.N.Shylappa Kalyan



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JUDGMENT

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This Civil Miscellaneous Appeal is filed by the claimants seeking enhancement of the compensation granted in the award dated 06.04.2022 made in MCOP No.1437 of 2018 passed by the Motor Accident Claims Tribunal, (Special Sub Judge), Tirunelveli.

2.The appellants preferred a claim petition before the Tribunal stating that on 08.06.2018 while the deceased travelling in a Honda Activa motorcycle bearing Registration No.TN-72-M-8151 from Krishnapuram to Tirunelveli, a Maruti Swift Car bearing Registration No.TN-92-B-2368 belonging to the first respondent insured with the second respondent came in a rash and negligent manner and hit the motorcycle from behind, as a result of which, the deceased, who was travelling as a pillion rider, sustained serious injuries and inspite of treatment, succumbed to injuries in the hospital on 10.06.2018.



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3.The first respondent, who is the owner of the Maruti Swift Car, filed a counter stating that the accident occurred only due to the rash and negligence of the rider of the two wheeler.

4.The second respondent/Insurance Company herein filed a counter stating that the first claimant, who was the rider of the two wheeler, was in an inebriated condition and therefore, the accident took place only due to the negligence on the part of the rider of the two wheeler and hence, they are not liable to pay the compensation.

5.To substantiate the case, on the side of the claimants, the first claimant examined himself as P.W.1 and marked 20 documents as Exs.P.1 to P.20. On the side of the respondents, the Doctor was examined as R.W.1 and two documents were marked as Exs.R1 and R2.

6.The Tribunal, after considering the oral and documentary evidence, had come to the conclusion that though the



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accident took place predominantly due to the rash and negligent driving of the driver of the first respondent, the rider of the motorcycle also contributed to the accident and hence, fixed 20% contributory negligence on the part of the rider of the motorcycle and 80% contributory negligence on the driver employed under the first respondent and awarded compensation of Rs.13,47,730/- with interest at the rate of 7.5% p.a. Challenging the said award, the claimants/appellants have filed the present appeal.

7.The learned counsel appearing for the appellants/claimants submitted that the claimants had marked Exs.P.13 to P.16 to prove that the deceased was an Accountant and job typist and therefore, the notional income fixed by the Tribunal at Rs.9,000/- per month was very low. The learned counsel further submitted that though there were two claimants, the Tribunal awarded consortium only to the first claimant at Rs.44,000/-, hence the second claimant(minor) was also entitled to Rs.44,000/- under the head of Consortium.



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8.The learned counsel for the second respondent submitted that the award of the Tribunal is just and reasonable; and the first claimant was in an inebriated condition and the same was established by examining R.W.1, Exs.R1 and R2 and therefore, no interference in the award is called for. The learned counsel further submitted that there is no evidence to prove either the avocation or income of the deceased and in such circumstances, notional income fixed by the Tribunal is just and reasonable.

9.This Court has carefully considered the rival submissions made on either side and also perused the materials available on record.

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

11.The respondent has established that the rider of the two wheeler had consumed alcohol at the time of the accident. The



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same was established by the evidence of R.W.1 and Exs.R.1 and R.2. The Tribunal, after considering the said evidence and also the manner of accident, fixed the negligence at 20% on the part of the rider of the two wheeler. This Court is of the view that the finding of the Tribunal on this aspect, does not require any interference. The second respondent also has not challenged the finding with regard to the fixing of negligence at 20% on the part of the rider of the two wheeler.

12.As regards the quantum of compensation, this Court finds that the accident took place in the year 2018. The claimants had proved the qualification of the deceased by producing Ex.P.13. The said document would show that she possessed the diploma in CADD CAE COMPUTERS and also possessed a certificate(Ex.P.16) establishing her qualification in Accounting Management. Considering the year of accident, the qualification of the deceased and the evidence let in by the appellants, it would be just and reasonable to fix the notional income at Rs.15,000/-. At the time of the accident, the deceased was aged about 37 years. Hence, 40%



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has to be added towards future prospects. Thus, the income would be Rs.21,000/- [15,000/- + $40/100 \times 15,000/- = 6,000/-$]. After deducting 1/3rd towards personal expenses and applying the multiplier '15' as the deceased was aged 37 years, the total compensation under loss of income would be Rs.25,20,000/- [21,000 – 7,000 = 14,000 x 12 x 15 = 25,20,000].

13.As regards the compensation under the head loss of consortium, it is seen that the Tribunal awarded compensation only to the first claimant. The second claimant viz., minor child, is also entitled to a sum of Rs.44,000/- under the head of loss of consortium. Thus, the total compensation is enhanced as follows:

S.No	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	For Loss of Income	15,12,000/-	25,20,000/-	enhanced
2.	For Loss of Consortium to the first petitioner	44,000/-	88,000/-	enhanced
3.	Loss of Estate	16,500/-	16,500/-	Confirmed
4.	Funeral expenses	16,500/-	16,500/-	Confirmed
5.	Medical Expenses	95,662/-	95,662/-	Confirmed
	Total	16,84,662/-	27,36,662/-	Enhanced



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Since 20% deduction from the total compensation has to be made towards the contributory negligence, the compensation payable by the second respondent/Insurance Company would be Rs.21,89,330/- (27,36,662 – 5,47,332).

14.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is enhanced as stated above. The second respondent/Insurance Company is directed to deposit the enhanced compensation of Rs.21,89,330/-with interest at 7.5% per annum from the date of petition, less the amount already deposited, along with proportionate interest and cost to the credit of the claim petition, within a period of six weeks from the date of receipt of a copy of this order. Out of the total compensation, the first claimant shall be entitled to 40% of the compensation and the second claimant would be entitled to the remaining amount. On such deposit, the first appellant is permitted to withdraw his share along with proportionate interest and costs, less the amount if any, already withdrawn. The second appellant aged 14 years at the time of



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accident would have attained majority and therefore, he is directed to file a petition before the Tribunal to record his majority, after which he may withdraw his share of the compensation. The appellants/claimants are directed to pay the court fee on the enhanced amount of compensation, if any, within a period of 4 weeks therefrom. No costs.

06.08.2024

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

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To

1.The Motor Accident Claims Tribunal,
(Special Sub Judge),
Tirunelveli.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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