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CMA.No.740 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.740 of 2024

1.Birundha

2.Minor. Thulasikasri
(Represented by her mother first appellant)

3.Mahalakshmi

... Appellants

vs.

1.Gopalakrishnan

2.ICICI Lombard General Insurance Company Limited,
No.6/5, Block - 7, Ward C,
Omalur Main Road,
Near Bus Stand, Salem - 9.

3.K.Jaya

4.M/s. United India Insurance Company Limited,
Salem, Divisional Office,
1st Floor, 104 - A, Ranga Building,
Main Road, Salem - 5.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 01.03.2023 in M.C.O.P.1300 of 2021 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.



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For Appellants : Mr.Amar D.Pandiya
for Mr.M.Mohamed Riyaz
For R2 : Ms.R.Sreevidhya
For R4 : Mr.P.Sankaranarayanan

J U D G M E N T

The appellants are the claimants in M.C.O.P.1300 of 2021 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.30,00,000/- for the death of one Jayakumar, (the husband of first claimant, father of second claimant and son of third claimant) in a road accident that took place on 14.03.2021.

2. The brief case of the appellants / claimants is as follows :

On 14.03.2021, Jayakumar (since deceased) was riding his two wheeler bearing Registration Number TN-48-AZ-8835 on Namakkal – Senthamangalam Road. When he was nearing Muthukapatti Village, a car bearing Registration Number TN-37-CC-2558 came in the opposite direction and hit the two wheeler, as a result of which, Jayakumar fell down and was ran over by a bus bearing Registration Number TN-46-U-



1899 which was coming behind him. He was immediately rushed to the Government Hospital, Namakkal. However, he died on the way to the hospital.

3. According to the claimants, the rash and negligent driving of the driver of the car bearing Registration Number TN-37-CC-2558 and the driver of the bus bearing Registration Number TN-46-U-1899 was the cause of the accident and that since the said vehicles were insured with the second respondent and fourth respondent Insurance Companies respectively, the owner of the vehicles and their insurers are jointly and severally liable to pay compensation to them.

4. In the Tribunal the owner of the car and the bus remained absent and were set *ex parte*. The respondents 2 and 4, the Insurance Companies resisted the claim petition on all the grounds available to them under Section 170 of the Motor Vehicles Act.

5. The Tribunal after analysing the evidence on record, fixed



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composite negligence on the part of the driver of the car and the driver of the bus in the ratio 60:40 and awarded compensation of Rs.10,85,000/- to the appellants / claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide its orders dated 01.03.2023. The Tribunal also held that the liability of the respondents 1 to 4 are joint and several.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellants / claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mr.Amar D.Pandiya, learned counsel appearing for the appellants, Ms.R.Sreevidhya, learned counsel appearing for the second respondent, the ICICI Lombard General Insurance Company Limited and Mr.J.Chandran, learned counsel appearing for the fourth respondent, the United India Insurance Company Limited.

8. Mr.Amar D.Pandiya, learned counsel appearing for the appellants would contend that the deceased was a mason earning a sum of



Rs.30,000/- per month. However, the Tribunal fixed the notional monthly income of the deceased as Rs.8,000/- including future prospects, which, according to him, is very meagre. He therefore, prayed for enhancement of compensation.

9. Per contra Ms.R.Sreevidhya, learned counsel appearing for the second respondent and Mr.P.Sankaranarayanan, learned counsel appearing for the fourth respondent contended that the Award passed by the Tribunal is based on the well laid down principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

10. In the claim petition, it is contended that the deceased was aged about 32 years and was a mason earning a sum of Rs.30,000/- per month. In the absence of income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.8,000/-. Considering the age of the victim and the year of the accident, this Court is of the opinion that fixing notional monthly income of the deceased at Rs.16,000/- would meet the ends of justice. As per the decision of the Supreme Court of India in



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National Insurance Co. vs Pranay sethi and others reported in **2017 (2)**

TNMAC 601, 40% is added towards future prospects of the deceased.

Since there are three dependents, $1/3^{\text{rd}}$ of the deceased's income should be deducted towards his personal expenses. The deceased was aged 35 years on the date of accident and the proper multiplier to be adopted in the instant case is 16 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in **(2009) 6 SCC 121**.

Calculation

Notional Income = Rs.16,000/-

40% Future Prospects = Rs.22,400/-

Loss of dependency

= Rs.22,400/- x 12 x 16 x $2/3$

= Rs.28,67,200/-

In addition to that the claimants are entitled to Rs.1,32,000/- ($44,000 \times 3$), Rs.16,500/- and Rs.16,500/- for Loss of Consortium, Loss of Estate and



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Funeral Expenses respectively as per the decision in *National Insurance Co. vs Pranay sethi and others* (cited supra). Thus, the claimants are entitled to a total compensation of Rs.30,32,200/- (28,67,200 + 1,32,000 + 16,500 + 16,500= 17,50,000) as shown in the following tabular column.

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs.28,67,200/-
2.	Loss of consortium (Rs.40,000/- x 4)	Rs.1,32,000/-
3.	Funeral expenses	Rs.16,500/-
4.	Loss of Estate	Rs.16,500/-
Total		Rs.30,32,200/-

11. Thus, the compensation awarded by the Tribunal is enhanced from Rs.10,85,000/- to Rs.30,32,200/- which would carry interest at the rate of 7.5% per annum.

12. In the result,

- The Civil Miscellaneous Appeal is allowed. No costs.
- The compensation awarded by the Tribunal is enhanced from Rs.10,85,000/- to Rs.30,32,200/-.



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- iii. The appellants / claimants are directed to pay court fee for the enhanced compensation amount, if any, within a period of four weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.
- iv. The first respondent and the second respondent, the ICICI Lombard General Insurance Company Limited, Salem, are directed to deposit 60% of enhanced compensation amount i.e., Rs.18,19,320/- and the third respondent and the fourth respondent, the United India Insurance Company Limited, Salem, are directed to deposit 40% of enhanced compensation amount i.e., Rs.12,12,880/- (less the amount already deposited) jointly and severally together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order to the credit of M.C.O.P.1300 of 2021 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

v. Apportionment :

The claimants 1 and 3 are at liberty to withdraw their respective shares after following due process of law :



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1st claimant / Wife	Rs.15,32,200/- (with interest and costs)
2nd claimant / Daughter	Rs.7,50,000/-
3rd claimant / Mother	Rs.7,50,000/-

- vi. The share of the minor second claimant is directed to be deposited in any one of the Nationalised Bank till she attains majority.
- vii. The appellants / claimants are not entitled to claim any interest for the period of delay of 193 days in filing this appeal.

04.09.2024

Index : Yes/No
Speaking/Non-speaking order
mtl

To

1. The Motor Accidents Claims Tribunal,
Special District Judge, Salem.

9/11

<https://www.mhc.tn.gov.in/judis>



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2.ICICI Lombard General Insurance Company Limited,
No.6/5, Block - 7, Ward C,
Omalur Main Road,
Near Bus Stand, Salem - 9.

3.M/s. United India Insurance Company Limited,
Salem, Divisional Office,
1st Floor, 104 - A, Ranga Building,
Main Road, Salem - 5.

4.The Section Officer, VR Section, Madras High Court, Chennai.

R.HEMALATHA, J.
mtl



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