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CMA.No.1159 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.1159 of 2024

1. Meena

2. Minor Naveen

3. Minor Gopal

Minors are Rep. by Natural Guardian

Mother Meena, 1st appellant

4. Poongodi

5. Shalini

6. Vignesh

... Appellants

VS.

1. Sabari Raji

2. Shriram General Insurance Co. Ltd.,

No.5, Sachin Plaza,

Reddiyar Block No.1,

Ram Nagar, Alagapuram,

Salem.

...

Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 01.09.2022 in M.C.O.P.402/2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.Amar D.Pandiya
For R2 : Mrs.R.Sreevidhya



J U D G M E N T

The appellants are the claimants in M.C.O.P.402/2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.50,00,000/- for the death of one Velayutham (husband of the 1st claimant, father of the 2nd and 3rd claimants and son of the 4th claimant) in a road accident which happened on 27.10.2019.

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

On 27.10.2019, Velayutham (deceased) was riding his two-wheeler bearing Registration number TN 30 AC 1742 on Sidharkovil road. When he was near Perumampatty X Road at about 4.35 p.m., a car bearing Registration number TN 21 AL 9076 came in the opposite direction and hit the two wheeler, as a result of which, he fell down and died on spot.

3. According to the claimants, the rash and negligent driving of the driver of the car bearing Registration number TN 21 AL 9076 was the cause of the accident and that since the said vehicle was insured with the



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second respondent, the Shriram General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to him.

4. In the Tribunal, the first respondent, the owner of the vehicle remained absent and was set *exparte*. The second respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal fastened negligence on the part of the driver of the motor cycle bearing Registration number TN 30 AC 1742 and on the deceased Velayutham in the ratio 50:50. The Tribunal after deducting 50% towards contributory negligence awarded a compensation of Rs.7,67,000/- 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 01.09.2022.

6. Aggrieved over the quantum of compensation awarded by the



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Tribunal and challenging fastening 50% contributory negligence on the part of the deceased, the appellants / claimants have filed the present appeal under Section 173 of the Motor Vehicles Act.

7. Heard Mr.Amar D.Pandiya, learned counsel appearing for the appellants and Mrs.R.Sreevidhya, learned counsel for the second respondent.

8. Mr.Amar D.Pandiya, learned counsel appearing for the appellants contended that the deceased was working in a Silver shop, earning a sum of Rs.30,000/- p.m. and the Tribunal, however, fixed a meagre sum of Rs.12,000/- including future prospects as his monthly notional income. He further contended that the Tribunal fastened 50% of contributory negligence on the part of the deceased without any basis and therefore, the same has to be set aside.

9. Per contra Mrs.R.Sreevidhya, learned counsel appearing for the second respondent, contended that the Award passed by the Tribunal is based on well laid 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. It was also contended by her that since the deceased had consumed alcohol at the time of accident, the Tribunal had rightly fixed contributory negligence to the extent of 50%.

10. A perusal of the FIR (Ex.P1) shows that the deceased was in an inebriated condition at the time of accident. The FIR was registered based on the complaint given by the wife of the deceased. However, the postmortem certificate of the deceased Velayutham did not speak about the consumption of alcohol by the deceased. The Tribunal in fact, had observed this in his orders. However, the Tribunal fastened 50% contributory negligence on the part of the deceased Velayutham. In the absence of any acceptable medical evidence, it cannot be held that the deceased was in an inebriated condition at the time of driving his two wheeler and invited the accident. The manner of the accident shows that the driver of the Car bearing Registration number TN 21 AL 9076 was rash and negligent in driving his vehicle and in fact, FIR was also registered against him. In the circumstances, 50% contributory negligence fastened on the part of the deceased Velayutham is liable to be set aside.

11. In the claim petition, it is contended that the deceased was aged about 45 years and was earning a sum of Rs.30,000/- per month.



The Tribunal fixed the notional monthly income of the deceased as Rs.12,000/- including future prospects. It is pertinent to point out that the accident took place in the year 2019 and in the facts and circumstances, this Court is of the opinion that fixing notional monthly income of the deceased at Rs.15,000/- would meet the ends of justice. As per the decision of the Supreme Court of India in *National Insurance Co. vs Pranay sethi and others* reported in **2017 (2) TNMAC 601**, 25% is added towards future prospects of the deceased. Since there are four dependents, 1/4th of the deceased's income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 14 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.15,000/-

after adding 25% Future Prospects = Rs.18,750/-

After 1/4 deduction = Rs.14,063/-

Loss of dependency :

= Rs.14,063/- x 12 x 14



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= Rs.23,62,584/-

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In addition to that the claimants are entitled to Rs.1,60,000/- (40,000/-x4), Rs.15,000/- and Rs.15,000/- towards Loss of Consortium, Loss of Estate and 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.25,52,584 (23,62,584 + 1,60,000 + 15,000 + 15,000 = 25,52,584) 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.23,62,584/-
2.	Loss of consortium (Rs.40,000/- x 4)	Rs.1,60,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.25,52,584/-

12. Thus, the compensation awarded by the Tribunal is enhanced from Rs.7,67,000/- to Rs.25,52,584/- which would carry interest at the rate of 7.5% per annum.

13. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.



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ii. The compensation awarded by the Tribunal is enhanced from Rs.7,67,000/- to Rs.25,52,584/-.

iii. 50% of the contributory negligence fastened on the part of the deceased Velayutham is set aside.

iv. 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.

v. The second respondent / Shriram General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.25,52,584/- (less the amount already deposited) 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 / uploading of this order to the credit of M.C.O.P.402/2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

vi. On such deposit being made, the claimants are at liberty to withdraw their respective shares as shown below after following due



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process of law:

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1st appellant / 1st wife = Rs.5,52,584/-
(with interest and costs)

2nd and 3rd Appellants(Minor sons) = Rs.7,50,000/- each

4th Appellant / mother = Rs.5,00,000/-

vii.The share of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalised Bank till they attain majority. The 1st appellant being the mother of the appellants 2 and 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors.

viii.The appellants/claimants are not entitled to claim any interest for the period of delay of 757 days in preferring this appeal.

29.08.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
vum

R.HEMALATHA, J.

vum

To

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

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

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