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CMA.No.1485 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1485 of 2024

1. Mani
2. Karthi
3. Minor Kasthuri
(Minor represented by his mother/Guardian Mani)
4. Eswari ... Appellants

Third appellant is declared as major and her mother/Guardian, the first appellant Mani, is discharged from guardianship of the third appellant vide court order dated 21.03.2024 made in CMP No.5713 & 5715 of 2024 in C.M.A. Sr. No.11581/2024.

vs.

1. Vadivel

Palanivel (died)

2. The Divisional Manager,
United India Insurance Company Limited,
Mettur Road, Muthaiya Complex, Erode.

3. Shanmugam ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 22.04.2022 in M.C.O.P.269/2018 on the file of the Motor Accident Claims Tribunal, IV Additional District & Sessions Court, Bhavani at Erode.



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For Appellants : Mr. C. Ramaraj
R1 & R3 : Notice dispensed with.
For R2 : Mr. D. Venkatachalam

J U D G M E N T

The appellants are the claimants in M.C.O.P.269/2018 on the file of the Motor Accident Claims Tribunal and they filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.20,00,000/- for the death of one Azhvarigounder (husband of first claimant and father of claimants 2 and 3 and son of claimant 4) in a road accident that occurred on 02.03.2018.

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

2.1. On 02.03.2018 Azhvarigounder (since deceased) was riding his two wheeler bearing Registration Number TN-33-C-6752 on Bhavani-Mettur Road. When he was nearing Chithar village, at about 06.20 a.m., a bus bearing Registration Number TN-45-AF-6777, belonging to the second respondent (since deceased), hit the two wheeler



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driven by Azhvarigounder, causing his instantaneous death.

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2.2. According to the claimants, the rash and negligent driving of the driver of the bus bearing Registration Number TN-45-AF-6777, was the cause of the accident and that since the said bus was insured with the third respondent (second respondent herein), the United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them. During the pendency of the trial the second respondent, the owner of the bus, died and his legal heir was impleaded as fourth respondent.

3. In the Tribunal the driver and the owner of the bus remained absent and were set *ex parte*. The third respondent Insurance Company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the driver of the offending bus bearing Registration Number TN-45-AF-6777 and on the deceased in the ratio



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60:40. Since the second respondent, the owner of the bus did not have a valid permit to ply his bus in the route, where the accident occurred, the Tribunal directed the third respondent Insurance Company to pay compensation of Rs.7,11,353/- to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, in the first instance, and then recover the same from the fourth respondent, the owner of the bus, under the same cause of action (pay and recovery), vide its orders dated 22.04.2022.

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

6. Heard Mr. C. Ramaraj, learned counsel appearing for the appellants and Mr. D. Venkatachalam, learned counsel appearing for the second respondent Insurance Company.

7. Mr. C. Ramaraj, learned counsel appearing for the appellants



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contended that the Tribunal had fastened negligence on the part of the deceased to an extent of 40% even though the driver of the bus did not have a valid permit to ply his bus in the said route. He also contended that the Tribunal has not awarded just compensation.

8. Per contra, Mr. D. Venkatachalam, learned counsel appearing for the second respondent/Insurance Company contended that the manner of the accident would clearly go to show that the rider of the two wheeler was also rash and negligent in driving his vehicle and therefore, the order of the Tribunal fastening negligence on the part of the rider of the two wheeler to an extent of 40% is perfectly in order. He also 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 in the present appeal.

9. A perusal of the rough sketch shows that the bus was proceeding towards southern direction from north on Bhavani-Mettur Road and the two wheeler was proceeding towards eastern direction from



west. The scene of occurrence is on the eastern side of the road which would go to show that both the vehicles were at fault. Since the bus is a Heavy Motor Vehicle, the driver of the bus should have been more careful while driving his vehicle. In the circumstances, the negligence on the part of the deceased and on the driver of the bus is fixed in the ratio 20:80.

9.1. According to the claimants, the deceased was working as a loadman earning a sum of Rs.20,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.10,000/-. The accident took place in the year 2018 and the deceased was aged 55 years on the date of accident. In the circumstances, this Court is of the view that fixing the notional income as Rs.13,000/- per month 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**, 10% is added towards future prospects of the deceased. Since the deceased had four dependents, 1/4 is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 11 as per the decision rendered in *Sarla Verma and others vs. Delhi Transport Corporation*



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and another reported in (2009) 6 SCC 121.

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Notional Income = Rs.13,000/-

10% Future Prospects = Rs.14,300/-

After 1/4 deduction = Rs.10,725/-

Loss of dependency

= Rs.10,725/- x 12 x 11

= Rs.14,15,700/-

In addition to that the claimants are entitled to Rs.1,60,000/- (40,000 x 4), Rs.15,000/- and Rs.15,000/- for '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).

9.2 The enhanced amount under the different heads are detailed hereunder:

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	14,15,700/-
2.	Loss of consortium	1,60,000/-



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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
	(Rs.40,000/- x 4)	
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	16,05,700/-
	Less 20% contributory negligence	3,21,140/-
	Compensation amount	12,84,560/-

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

10. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The orders passed by the Tribunal fixing contributory negligence on the part of the deceased to an extent of 40% is reduced to 20%.
- iii. The compensation awarded by the Tribunal is enhanced from Rs.7,11,353/- to Rs.12,84,560/-.
- iv. The appellants / claimants are directed to pay court fee for the



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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, the United India Insurance Company Limited, Erode, is directed to deposit the enhanced compensation amount of Rs.12,84,560/- (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, in the first instance, to the credit of MCOP.269 of 2018 on the file of the Motor Accident Claims Tribunal, IV Additional District & Sessions Court, Bhavani, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order and then recover the same from the third respondent, the owner of the bus, under the same cause of action. The ratio of apportionment made by the Tribunal shall be kept intact.

vi. On such deposit being made, the claimants 1 to 4 are at liberty to withdraw the same as per the orders passed by the Tribunal after



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following due process of law.

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vii.The appellants/claimants are not entitled to claim any interest for the period of delay of 507 days in filing this appeal, as per the orders of this Court dated 06.06.2024 in C.M.P. No.7889 of 2024.

18.09.2024

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

To

1. Motor Accident Claims Tribunal,
IV Additional District & Sessions Judge, Bhavani
2. The Divisional Manager,
United India Insurance Company Limited,
Mettur Road, Muthaiya Complex, Erode.
- 3.The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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