IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1537 of 2024 and
C.M.P.No.13212 of 2024

The Manager,
The National Insurance Company Limited,
Third Party Cell,
No.46, Moore Street,
III Floor, Chennai - 600 001. ... Appellant

vs.

1. V.Gowri
2. K.Venkatesan
3. V.Kavitha
4. K.Vaitheeswaran ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award, dated 17.07.2023 in M.C.O.P.3728/2016 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellant : Mr.R.Ravichandran

For Respondents : Mr.R.S.Anandan

JUDGMENT

The appellant, the Manager of National Insurance Company Limited, Chennai is the second respondent in M.C.O.P.3728/2016 on the file of the Motor Accident Claims Tribunal, Chennai. The claimants / respondents 1 to 3 filed a claim petition under Section 166 of Motor Vehicles Act, seeking compensation of Rs.80,00,000/- for the death of one Dinesh (sons of the claimants 1 and 2 and brother of the third claimant) in a road accident that occurred on 25.12.2015.

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

On 25.12.2015, Dinesh was travelling in a Maruti Alto car bearing Registration number TN 01 AB 5139 on Chennai - Puducherry road. When the car was nearing Marakkanam, the driver of the car drove the vehicle rashly and negligently and hit a drum placed as median, as a result of which, Dinesh fell down and sustained injuries all over his body. He was immediately rushed to JIPMER Hospital, Puducherry. However, he succumbed to injuries on the same day.

3. According to the claimants, the rash and negligent driving of the driver of the car bearing Registration number TN 01 AB 5139 was the cause of the accident and that since the owner of the car had insured his vehicle with the appellant, the National Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal, the owner of the car remained absent and was set *ex parte*. The appellant, Insurance Corporation resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal after analysing the evidence on record, fastened negligence on the part of the driver of the car bearing Registration Number TN 01 AB 5139 and directed the appellant Insurance Company to pay compensation of Rs.52,33,000/- to the claimants 1 and 3 together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation and dismissed the claim petition as against the father of the deceased, vide its orders, dated 17.07.2023. The Tribunal also held that the liability of the owner and the insurer is joint and several.

6. Aggrieved over the Award passed by the Tribunal, the appellant / Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act.

7. Heard Mr.R.Ravichandran, learned counsel for the appellant / Insurance Company and Mr.R.S.Anandan, learned counsel for the respondents 1 and 2 / claimants.

8. Mr.R.Ravichandran, learned counsel for the appellant / Insurance Company contended that the deceased in the instant case died as a bachelor. However, the Tribunal had deducted 1/3rd towards personal expenses of the deceased. She also contended that when the deceased was working in a private concern, 50% was added towards future prospects of the deceased. She therefore prayed for setting aside the Award passed by the Tribunal.

9. Per contra, Mr.R.S.Anandan, learned counsel appearing for the claimants contended that relied on the decision of the Hon'ble Supreme Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121*** and contended that if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third. He also contended that as per the decision of the Hon'ble Supreme Court in ***National Insurance Co. vs Pranay sethi and others*** reported in ***2017 (2) TNMAC 601 and contended*** that since the deceased was employed in TCS, 50% of his income should be added towards future prospects.

10. In the instant case, the deceased was working in Tata Consultancy Services (in short TCS) as a system Engineer, earning a sum of Rs.27,251/- per month. The Tribunal after deducting the amount of Rs.3,584/- towards Provident Fund, Labour Welfare, Transport and TCS well fare Trust, had take up by net pay of Rs.23,667/-. The deduction made by the Tribunal cannot be sustained. Hence, actual income of the deceased which is Rs.27,251/- is taken up for loss of dependency. The deceased died as a bachelor and the claimants in the instant case are parents and sister of the diseased. The father of the deceased is alive and therefore, 50% of the income should be deducted while computing loss of dependency. The deceased was employed in TCS and therefore 50% is added towards future prospects as per the decision in ***National Insurance Co. vs Pranay sethi and others*** (*cited supra*). The proper multiplier to be adopted in the instant case is 18 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121.***

<u>Calculation :</u>

Annual income of the deceased (27,251X12)	:	Rs.3,27,012/-
50% enhancement towards future prospects	:	Rs.1,63,506/-
Annual income	:	Rs.4,90,518/-

Income Tax Slab for Assessment Year 2016-2017

Upto Rs.2,50,000/-	: Nil
Rs.2,50,000 to Rs.5,00,000 - 10%	
(Rs.4,90,518 - Rs.2,50,000	
= Rs.2,40,518 X10%	:Rs.24,051.80/-
Annual income after deducting income tax	: **Rs.4,66,466.20/-**
(Rs. 4,90,518 - Rs. 24,051.80)	**Rs.4,66,466/-**
	(Round off)

Hence, fixing the annual income of the deceased as Rs.4,66,466/- applying multiplier 18 and deducting 1/2 towards personal expenses of the deceased, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.41,98,194/-

Annual Notional Income = Rs..4,66,466/-
Rs..4,66,466 X 18 X 1/2
Rs.41,98,194/-

In addition to that the claimants are entitled to Rs.1,20,000/- (40,000/-x3), 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.43,48,194 (41,98,194 + 1,20,000 + 15,000 + 15,000 = 43,48,194) as shown in the following tabular column:

S.No.	***Head***	***Amount granted by this court***
1.	Loss of dependency	Rs.41,98,194/-
2.	Loss of consortium (Rs.40,000/- x 3)	Rs.1,20,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
	Total	Rs.43,48,194/-

11. Thus, the compensation awarded by the Tribunal is scaled down to Rs.43,48,194/- from Rs.52,33,000/- which would carry interest at the rate of 7.5% per annum.

12. In the result,

i. The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

ii. The compensation awarded by the Tribunal is scaled down to Rs.43,48,194/- from Rs.52,33,000/-.

iii. The liability of the fourth respondent (owner) and the appellant (the National Insurance Company Limited) is joint and several and the appellant / the National Insurance Company Limited is directed to deposit the modified compensation amount i.e., Rs.43,48,194/- (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 realisation in the first instance, 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.3728/2016 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

iv. On such deposit being made, the claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

30.09.2024

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

<u>R.HEMALATHA, J.</u>

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To

1.The Motor Accident Claims Tribunal,
II Judge, Small Causes Court,
Chennai.

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

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<u>C.M.P.No.13212 of 2024</u>

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