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CMA.Nos.1162 and 1461 of 2024
and C.M.P.No.10492 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CMA.Nos.1162 and 1461 of 2024
and
C.M.P.No.10492 of 2024

C.M.A. No.1162 of 2024

The Managing Director,
State Express Transport Corporation,
Pallvan Salai, Chennai.

... Appellant

VS.

1.U.Rajesh
2.U.Ramesh
3.U.Rajkumar

... Respondents

C.M.A.No.1461 of 2024

1.U.Rajesh
2.U.Ramesh
3.U.Rajkumar

... Appellants

Vs.

The Managing Director,
State Express Transport Corporation,
Pallvan Salai, Chennai.

...Respondent



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and C.M.P.No.10492 of 2024

PRAYER in C.M.A. No.1162 of 2024: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 29.03.2021 in M.C.O.P.41 of 2014 on the file of the Motor Accident Claims Tribunal, (Subordinate Court), Attur.

PRAYER in C.M.A.No.1461 of 2024 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 29.03.2021 in M.C.O.P.41 of 2014 on the file of the Motor Accident Claims Tribunal, (Subordinate Court), Attur.

Appearance in C.M.A. No.1162 of 2024 :

For Appellant : Ms.M.Preetha
for Mr.K.Kathiresan

For Respondents : Mr.R.Nalliyappan

Appearance in C.M.A. No.1461 of 2024 :

For Appellants : Mr.R.Nalliyappan

For Respondent : Ms.M.Preetha
for Mr.K.Kathiresan

COMMON JUDGMENT

The appellants in C.M.A.No.1461 of 2024 are the claimants in M.C.O.P.41 of 2014 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Attur. They filed the claim petition under Section 166



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of the Motor Vehicles Act, seeking compensation of Rs.12,00,000/- for the death of their brother Anandhakumar, in a road accident that took place on 15.03.2014.

2. The appeal in C.M.A.No.1162 of 2024 has been filed by the Managing Director, State Express Transport Corporation, Chennai, who is the respondent in M.C.O.P.41 of 2014 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Attur.

3. The case of the claimants in a nutshell is as follows:

On 15.03.2014, Anandhakumar (deceased) was travelling as a pillion rider in a two wheeler TVS XL Super bearing Registration Number TN-77-2115. He was proceeding towards Narasingapuram from Attur Ambedkar Nagar. When he was nearing Narasingapuram Sriram Sawmill at about 9.30 a.m., a speeding bus bearing Registration Number TN-01-N-4794, belonging to the State Express Transport Corporation, hit his two wheeler resulting in his instantaneous death.



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4. According to the claimants the rash and negligent driving of the driver of the bus bearing Registration Number TN-01-N-4794, belonging to the State Express Transport Corporation was the cause of the accident and therefore, they are liable to pay compensation to them.

5. The Tribunal after analysing the evidence on record, awarded a compensation of Rs.10,89,000/- to the 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 29.03.2021.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimants have filed the appeal in CMA 1461 of 2024 seeking enhancement of compensation, while the Managing Director, State Express Transport Corporation, Chennai, filed CMA No.1162 of 2024 questioning their liability to pay compensation to the claimants.

7. Heard Mr.R.Nalliyappan, learned counsel appearing for the claimants and Ms.M.Preetha, learned counsel appearing for the State



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Express Transport Corporation.

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8. Ms.M.Preetha, learned counsel appearing for the State Express Transport Corporation relied on the decision of the Hon'ble Supreme Court in *The New India Assurance Company Limited vs. Anand Pal and Others* in *SLP (Civil) No.7805 of 2022* contended that the claimants who are three older siblings of the deceased are not entitled to get any compensation.

9. Mr.R.Nalliyappan, learned counsel appearing for the claimants relied on the decision of the Hon'ble Supreme Court in *National Insurance Co. Ltd. Vs Birender and others* reported in *2020 (1) TN MAC 182 (SC)* and contended that any legal representative of the deceased can move an application for compensation. He also contended that though the deceased was working as a daily wager earning a sum of Rs.10,000/- per month but the Tribunal had fixed his notional monthly income as Rs.6,500/-. He therefore prayed for overall enhancement of compensation.



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10. As per Section 2(11) C.P.C, "Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. under Section 2(1)(g).

11. Regarding the entitlement of brothers in laying the claim for compensation, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and another*** reported in ***1987 (3) SCC 234***, wherein it has been held as follows:

"Brother of a person, who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased. In an Indian family brothers, sisters and



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brothers' children and sometimes foster children live together and they are dependant upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which has been substantially modified by the provisions of the Motor Vehicles Act in relation to cases arising out of motor vehicles accidents. (Ed.:Though in the present case it may be that the deceased, who was only a 14 year old boy, was not the bread-winner of the family at the present moment, but legally his brothers would be entitled to claim compensation)

Chapter VIII of the Motor Vehicles Act provides for a forum alternative to that provided under the provisions of the Fatal Accidents Act for realisation of compensation payable on account of motor vehicles accidents and its provisions are substantive and not merely procedural in nature. They substantively affect the rights of the parties. As the right of action created by the Fatal Accidents Act was "new in its species, new in its quality, new in its principles, in every way new" the right given to the legal representatives under the Act to file an application for compensation for death due to



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a motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the Fatal Accidents Act. New situations and new dangers require new strategies and new remedies. Contrary observation made by the Supreme Court in Minu B.Mehta case were in the nature of obiter dicta."

12. It is therefore clear that the legal representatives of the deceased have a right to apply for compensation. The Hon'ble Supreme Court in ***National Insurance Company Ltd., Vs. Birender and others*** (cited supra), has specifically held that all or any of the legal representatives of the deceased can move an application for compensation and the relevant portion of the judgment is extracted hereunder:

"12. The legal representatives of the deceased could move application for compensation by virtue of Clause (c) of Section 166(1). The major married son who is also earning and not fully dependant on the deceased, would be still covered by the expression "legal representative" of the deceased. This Court in Manjuri Bera (supra) had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the



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concerned legal representative. Notably, the expression "legal representative" has not been defined in the Act. In Manjuri Bera (supra), the Court observed thus:

"9. In terms of Clause (c) of sub-section (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view that the appellant could maintain a claim petition in terms of Section 166 of the Act.

10.The Tribunal has a duty to make an Award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person, who claims for the same."



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In the instant case, it is stated that all the brothers were residing under one roof and their parents are no more.

13. In the decision in *The New India Assurance Company Limited vs Anand Pal and Others* (cited supra) relied upon by the learned counsel for the State Express Transport Corporation it was found that all the siblings were married and were living separately with their respective families. In such circumstances, the Supreme Court held that the older siblings are not entitled to get any compensation. The facts of the present case are entirely different.

14. As far as the quantum of compensation is concerned, the contention of the claimants is that the deceased was a daily wager earning a sum of Rs.9,000/- per month. In the absence of income proof, the Tribunal fixed the monthly income of the deceased as Rs.6,500/-. It is pertinent to point out that the accident took place in the year 2014 and in the facts and circumstances, this Court is of the opinion that fixing notional monthly income of the deceased at Rs.10,000/- 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. The deceased died as a bachelor and hence, 50% is deducted towards his personal expenses. The deceased was aged 22 years on the date of the accident and 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**.

Calculation

Notional Income = Rs.10,000/-

40% Future Prospects = Rs.14,000/-

After 1/2 deduction = Rs.7,000/-

Loss of dependency

= Rs.7,000/- x 12 x 18

= Rs.15,12,000/-

In addition to that the claimants are entitled to Rs.1,20,000/- (40,000 x 3), 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). Thus, the claimants are



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entitled to a total compensation of Rs.16,62,000/- (15,12,000 + 1,20,000 + 15,000 + 15,000= 16,62,000) 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.15,12,000/-
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.16,62,000/-

15. Thus, the compensation awarded by the Tribunal is enhanced from Rs.10,89,000/- to Rs.16,62,000/- which would carry interest at the rate of 7.5% per annum.

16. In the result,

CMA. 1461 of 2024

- The appeal in CMA. 1461 of 2024 is partly allowed. No costs.
- The compensation awarded by the Tribunal is enhanced from Rs.10,89,000/- to Rs.16,62,000/-.
- The State Express Transport Corporation is directed to deposit the



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enhanced compensation amount i.e. Rs.16,62,000/- (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 to the credit of M.C.O.P.41 of 2014 on the file of the Motor Accident Claims Tribunal, (Subordinate Court), Attur.

iv. On such deposit being made, the claimants are entitled to withdraw the same, as per the apportionment made by the tribunal, after following due process of law. The appellants/claimants are not entitled to claim any interest for the period of delay of 552 days in filing this appeal.

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The appeal in CMA No.1162 of 2024 is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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



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To

1.The Motor Accident Claims Tribunal,
(Subordinate Court), Attur.

2. The Managing Director,
State Express Transport Corporation,
Pallvan Salai, Chennai.

3. The Section Officer, V.R. Section, Madras High Court, Chennai.



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R.HEMALATHA, J.
mtl

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