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CMA.No.323 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.323 of 2023

1.Perumal
2.Poomalai
3. Kolanchiyammal

... Appellants

VS.

1.Sivalingam

2.National Insurance Company Limited,
Represented by its Manager,
2nd Floor, No.32, Dwaraganath Building,
Trichy Main Road, Venkatesapuram,
Perambalur.
Policy No.39010231176202746382

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 28.11.2022 in M.C.O.P.331 of 2019 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.



CMA.No.323 of 2023

For Appellants : Mr.C.Vidhusan
For R1 : No appearance
For R2 : Ms.N.B.Surekha

J U D G M E N T

The appellants are the claimants in M.C.O.P.331 of 2019 on the file of the Motor Accident Claims Tribunal, Perambalur. They filed the claim petition under Sections 140 and 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.8,00,000/- for the death of one Sellammal (wife of claimant 1 and mother of claimants 2 and 3) in a road accident that occurred on 12.08.2018.

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

On 12.08.2018, Sellammal (since deceased) was standing near Thiruppeyar bus stop on Vridhachalam – Veppur main road and at about 5.00 p.m. a speeding two wheeler bearing Registration Number TN-91-V-8291 hit her, as a result of which, she fell down and sustained injuries all over her body. She was immediately rushed to Government Hospital, Vridhachalam. However, she succumbed to injuries on 14.08.2018.



CMA.No.323 of 2023

WEB COPY

3. According to the claimants, the rash and negligent riding of the rider of the two wheeler bearing Registration Number TN-91-V-8291 was the cause of the accident and that since the said vehicle was insured with the second respondent, the National Insurance Company Limited, the owner of the vehicle and the insurer are jointly and severally liable to pay compensation to them.

4. The respondents contested the claim petition by filing their respective counters.

5. The Tribunal, vide its orders dated 28.11.2022, fastened negligence on the part of the rider of the two wheeler bearing Registration Number TN-91-V-8291 and further held that the owner of the vehicle and the insurer are jointly and severally liable to pay compensation of Rs.1,50,000/- 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.



CMA.No.323 of 2023

WEB COPY

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.C.Vidhusan, learned counsel appearing for the appellants and Ms.N.B.Surekha, learned counsel appearing for the second respondent.

8. The age of the deceased in the instant case was 74 years and according to the claimants she was working as a daily wager earning a sum of Rs.200/- per day. Since the first claimant was receiving pension, the Tribunal did not award any amount towards loss of dependency. It is pertinent to point out that the deceased was also a contributor to the family expenses. Therefore, the Tribunal was wrong in not awarding any amount towards loss of dependency. The accident took place in the year 2018. Therefore, a sum of Rs.6,000/- is fixed as notional monthly income of the deceased. Considering the age of the claimants, 1/2 is deducted towards the personal expenses of the deceased. The proper multiplier to



be adopted in the instant case is 5 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.6,000/-

After 1/2 deduction = Rs.3,000/-

Loss of dependency

= Rs.3,000/- x 12 x 5

= Rs.1,80,000/-

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*** reported in ***2017 (2) TNMAC 601***. Thus, the claimants are entitled to a total compensation of Rs.3,30,000/- (1,80,000 + 1,20,000 + 15,000 + 15,000 = 3,30,000) as shown in the following tabular column:



CMA.No.323 of 2023

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs.1,80,000 /-
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.3,30,000/-

9. Thus, the compensation awarded by the Tribunal is enhanced to Rs.3,30,000/- that would carry interest at the rate of 7.5% per annum.

10. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.3,30,000/-.
- iii. The appellants / claimants are directed to pay the 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.



CMA.No.323 of 2023

WEB COPY

- iv. The second respondent, the National Insurance Company Limited, Perambalur, is directed to deposit the enhanced compensation amount i.e., Rs.3,30,000/- (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 / uploading of this order to the credit of M.C.O.P.331 of 2019 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.
- v. On such deposit being made, the appellants / 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.

30.10.2024

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



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CMA.No.323 of 2023

To

1.The Motor Accidents Claims Tribunal,
Principal District Court, Perambalur.

2.National Insurance Company Limited,
Represented by its Manager,
2nd Floor, No.32, Dwaraganath Building,
Trichy Main Road, Venkatesapuram,
Perambalur.

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



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CMA.No.323 of 2023

R.HEMALATHA, J.

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