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C.M.A.No.281 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.281 of 2024

1. Kannagi
2. Vairavel

... Appellants

vs.

1. Rajesh

2. Bajaj Alliance General Insurance Company Limited,
No.497 & 498, 5th Floor, Poonamalle High Road,
Arumbakkam, Chennai - 106.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 01.08.2023 in M.C.O.P.186 of 2021 on the file of the Motor Accident Claims Tribunal, III Additional District & Sessions Court, Cuddalore at Vridhachalam.

For Appellants : Mr.S.Udhayakumar

For R2 : Mr.T.K.Premkumar



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JUDGMENT

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The appellants are the claimants in M.C.O.P.186 of 2021 on the file of the Motor Accident Claims Tribunal, Cuddalore at Vridhachalam. They filed the claim petition under Section 166(1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.30,00,000/- for the death of their son Vettrivel, in a road accident that took place on 28.09.2021.

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

On 28.09.2021, Vettrivel (since deceased) aged 13 years was riding his bicycle on Vridhachalam - Veppur main road. When he was nearing Kandappankurichi Middle School, a speeding Mini Tempo Van bearing Registration Number TN-82-U-0487 hit his bicycle, as a result of which, Vettrivel fell down and sustained injuries all over his body. He was immediately rushed to Government Hospital, Perambalur. However, he succumbed to injuries on 30.09.2021.



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3. According to the claimants, the rash and negligent driving of the driver of the Mini Tempo Van bearing Registration Number TN-82-U-0487 was the cause of accident and that since the said vehicle was insured with the second respondent, the Bajaj Alliance General 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 Mini Tempo Van remained absent and was set *exparte*. The second respondent, the Bajaj Alliance General Insurance Company Limited resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal, vide its orders dated 01.08.2023, fastened negligence on the part of the driver of the Mini Tempo Van bearing Registration Number TN-82-U-0487 and further held that the owner of the vehicle and the insurer are jointly and severally liable to pay compensation of Rs.5,65,000/- 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.



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6. 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.

7. Heard Mr.S.Udhayakumar, learned counsel appearing for the appellants and Mr.T.K.Premkumar, learned counsel appearing for the second respondent.

8.Mr.S.Udhayakumar, learned counsel for the appellants contended that the Tribunal has not awarded just compensation and therefore, prayed for enhancement of compensation.

9. Per contra Mr.T.K.Premkumar, learned counsel appearing for the second respondent, the Bajaj Alliance General Insurance Company Limited 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.



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10. In the claim petition, it is contended that the deceased was aged about 13 years and was a student. In ***Kishan Gopal and another vs. Lala and others*** reported in ***2013 (2) TN MAC 358***, the Hon'ble Supreme Court fixed the notional income of a minor child as Rs.30,000/- per annum and granted a sum of Rs.50,000/- under the other conventional heads. The accident in ***Kishan Gopal and another vs. Lala and others*** (cited supra) happened in the year 1992. In the present case, considering the passage of time and the age of the victim child, fixing Rs.7,000/- per month as notional income of the deceased would meet the ends of justice. The proper multiplier to be adopted in the instant case is 18, as per the decision in ***Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121***. Calculation for loss of dependency is worked out here under.

Calculation :

$$\text{Notional Income} = \text{Rs.7,000/-} \times 12 = \text{Rs.84,000/-}$$

Loss of dependency :



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= Rs.84,000/- x 18

= Rs.15,12,000/-

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In addition to that the claimants are entitled to Rs.80,000/- (40,000 x 2), Rs.15,000/- and Rs.15,000/- towards "Loss of Consortium, Funeral Expenses and Loss of Estate" respectively as per the decision in ***National Insurance Company Limited Vs. Pranay Sethi and others*** (cited supra). Thus, the claimants are entitled to a total compensation of Rs. 16,22,000/- (15,12,000 + 80,000 +15,000 +15,000 = 16,22,000) as shown in the following tabular column.

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	15,12,000/-
2.	Loss of consortium	80,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
Total		16,22,000/-

11. Thus, the compensation awarded by the Tribunal is



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enhanced to Rs.16,22,000/- that 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.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.16,22,000/-.
- 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.
- iv. The second respondent, the Bajaj Alliance General Insurance Company Limited, Chennai is directed to deposit the compensation amount i.e., Rs.16,22,000/- (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.186 of 2021 on the file of the Motor Accident Claims Tribunal, III Additional District & Sessions Court,



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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.

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Index : Yes/No

Speaking/Non-speaking order
mtl



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To

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1. The Motor Accident Claims Tribunal,
III Additional District & Sessions Court, Cuddalore at Vridhachalam.
2. Bajaj Alliance General Insurance Company Limited,
No.497 & 498, 5th Floor, Poonamalle High Road,
Arumbakkam, Chennai - 106.
3. The Section Officer, V.R. Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

mtl

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