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CMA.No.1582 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1582 of 2023 & C.M.P. No.15910 of 2023

&

Cros. Obj. No.92 of 2023

C.M.A. No.1582 of 2023

Manager, The New India Assurance Company Limited
First Floor, City Branch No.799D,
Near Mettupalayam Road, Flower Market,
Shanmugha Theatre, R.S.Puram,
Coimbatore.

... Appellant

VS.

1. Thamizharasi
2. Meenakshi,
3. Kamakshi
4. The Proprietor,
Venkataraman Transport,
No.505/4, Keertham Village and Post,
Saravanampatti, Coimbatore.

...Respondents

CROS. OBJ. NO.92 of 2023

1. Thamizharasi
2. Meenakshi,
3. Kamakshi

...Cross Objectors



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Vs.

1. Manager, The New India Assurance Company Limited
First Floor, City Branch No.799D,
Near Mettupalayam Road, Flower Market,
Shanmugha Theatre, R.S.Puram,
Coimbatore.

2. The Proprietor,
Venkataraman Transport,
No.505/4, Keertham Village and Post,
Saravanampatti, Coimbatore.

...Respondents

PRAYER in C.M.A. No.1582 of 2023: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 04.04.2022 in M.C.O.P.No.45 of 2021 on the file of the Motor Accident Claims Tribunal, (Special Court No.1), Jayankondam.

PRAYER in CROS.OBJ. No.92 of 2023

Cross objection filed under Order 41 Rule 22 of the Code of Civil Procedure against the Award dated 04.04.2022 in M.C.O.P.No.45 of 2021 on the file of the Motor Accident Claims Tribunal, (Special Court No.1), Jayankondam.

Appearance In C.M.A. No.1582 of 2023

For Appellant	:	Mr. K. Vinod
For R1 to R3	:	Mr. P. Parthi Kannan
For R4	:	No appearance



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Appearance in Cros. Obj. No. 92 of 2023

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For Cross Objectors : Mr. P. Parthi Kannan
For R1 : Mr. K. Vinod
For R2 : No appearance.

COMMON JUDGMENT

The appellant in CMA No.1582 of 2023 is the Insurance Company while the Cross Objectors in Cros. Obj. No. 92 of 2023 are the claimants in MCOP No.45 of 2021 on the file of the Motor Accident Claims Tribunal, Special Court No.1, Jayankondam.

2. The Cross Objectors / claimants filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.75,00,000/- for the death of one Satheesh Kumar (son of the first claimant, the brother of the second and third claimants) in a road accident that took place on 22.09.2020.

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

3.1. On 22.09.2020, at about 10 p.m, Satheesh Kumar (deceased) was travelling as a pillion rider in a two wheeler Hero Honda Splender Plus bearing Registration No.TN-31-A-8056, driven by his



friend Iyyappan, on Jayankondam-Virudachalam Road. When they were nearing Rangiyam bus stop, a lorry bearing Registration No.TN-38-CD-1881, owned by the first respondent came in the opposite direction and hit the two wheeler, as a result of which, Satheesh Kumar fell down and sustained injuries. He was immediately rushed to the hospital. However he succumbed to injuries on 27.09.2020.

3.2. According to the claimants the rash and negligent driving of the driver of the first respondent's lorry, bearing Registration No.TN-38-CD-1881, was the cause of the accident and since the said vehicle was insured with the second respondent, both of them are jointly and severally liable to pay compensation to them.

4. The first respondent remained absent and was set *ex parte* in the Tribunal. The second respondent 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, directed



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the second respondent to pay compensation of Rs.25,89,200/- to the claimants together with interest at the rate of 6% per annum from the date of petition till the date of realisation.

6. Questioning the quantum of compensation awarded by the Tribunal, the New India Assurance Company Limited, Coimbatore, has filed CMA No.1582 of 2023, and the claimants filed Cross Obj. No.92 of 2023 seeking enhancement of compensation.

7. Heard Mr. K. Vinod, learned counsel for the appellant in C.M.A. No.1582 of 2023 and Mr. P. Parthi Kannan, learned counsel for the respondents.

8. Mr.K. Vinod, learned counsel appearing for the appellant, the New India Assurance Company Limited, contended that the Tribunal had deducted 1/3 towards personal expenses of the deceased even though he died as a bachelor. He 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 when family



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of a bachelor is large and dependent on his income, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-thirds. According to him, in the instant case, the claimants 2 and 3 are elder sisters of the deceased Satheesh Kumar and are well settled and therefore, deducting 1/3 towards the personal expenses of the deceased by the Tribunal is erroneous.

9. Per contra Mr. P. Parthi Kannan, learned counsel for the cross objectors/claimants contended that the deceased was a college student and on the date of accident he was also working in a hotel and was earning adequately. Since he had two siblings and a widowed mother, 1/3 deduction towards his personal expenses is perfectly in order. It is also his contention that even though the accident took place in the year 2020, the Tribunal had fixed notional income of the deceased as Rs.12,000/-, which is very low and the same has to be enhanced. According to him, the Tribunal had not fixed adequate amounts under other heads as per the decision rendered by the ***Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601.***



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He therefore prayed for enhancement of compensation.

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10. It is seen from the records that the claimants 2 and 3 are the elder sisters of the deceased Satheesh Kumar and they were aged 23 and 21 respectively. They were not depending on the income of the deceased as he was a college student on the date of accident. The first claimant is the mother of the deceased Satheesh Kumar and is a widow. In the circumstances, the Tribunal had wrongly deducted 1/3 towards the personal expenses of the deceased instead of 1/2. In the decision of the Supreme Court of India in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** (cited supra) it has been held thus:

"However, where family of the bachelor is large and dependent 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."

In the instant case the deceased had a widowed mother and his sisters are



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older than him. Moreover, the deceased was studying Diploma in Engineering. In the circumstances, his monthly income is fixed as Rs.16,000/-. To this sum, 40% should be added towards future prospects as per the decision of the Constitution Bench of the Honourable Supreme Court of India in *National Insurance Company Limited vs. Pranay Sethi and others (cited supra)*, and hence the monthly income of the deceased is fixed at Rs.22,400/- ($16,000 + 6,400 = 22,400$). Since the deceased was a bachelor, $1/2$ should be deducted towards his personal expenses and thus it would be a sum of Rs.11,200/- ($22,400 \times 1/2 = 11,200$). The age of the deceased was 20 years on the date of accident and 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 :

Notional Income = Rs. 22,400/-

After $1/2$ deduction = Rs.11,200/-

Loss of dependency :



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= Rs.11,200 x 12 x 18

= Rs.24,19,200/-

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In addition to that, as per the decision rendered by the Honourable Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others* (cited supra), the claimants are entitled to Rs.40,000/-, Rs.15,000/- and Rs.15,000/- towards "Loss of Consortium, Funeral Expenses and Loss of Estate" respectively. Since there are three dependents, a sum of Rs.1,20,000/- is granted towards loss of consortium (40000 x 3 = 1,20,000). Thus, the claimants are entitled to a total compensation of Rs.25,69,200/- (24,19,200 + 1,20,000 + 15,000 + 15,000= 25,69,200) which is extracted here under.

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	24,19,200/-
2.	Loss of consortium	1,20,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
Total		25,69,200/-

11. Thus, the compensation awarded by the Tribunal is reduced



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from Rs.25,89,200/- to Rs.25,69,200/- which would carry interest at the rate of 7.5% per annum.

12. In the result,

(i) The appeal in C.M.A. No.1582 of 2022 and the Cross Objection No.92 of 2023 are partly allowed. No costs. Consequently connected miscellaneous petition is closed.

(ii) The compensation awarded by the Tribunal is reduced from Rs.25,89,200/- to Rs.25,69,200/-.

(iii) The appellant, the New India Assurance Company Limited, in C.M.A. No. 1582 of 2023 is directed to deposit the compensation amount i.e., Rs.25,69,200/- (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.No.45 of 2021 on the file of the Motor Accident Claims Tribunal (Special Court No.I), Jayankondam.

(iv) The ratio of apportionment made by the Tribunal shall be



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kept intact. The Cross Objectors/claimants are at liberty to withdraw the compensation amount as per the directions given by the Tribunal after following due process of law.

08.08.2024

Index : Yes/No

Speaking/Non-speaking order
bga

To

1. Motor Accident Claims Tribunal, Special Court No.I, Jayankondam.
2. The Section Officer, V.R. Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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