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CMA.No.804 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.804 of 2023

1. K.J. Mary Joby
W/o. Late K.S. Jaganathan

2. Minor K.J. Neha Sree
D/o. Late K.S. Jaganathan

3. Minor Sai Harsha
S/o. Late K.S. Jaganathan

4. K.S. Devika
W/o. K. Subramaniam

5. K. Subramaniam,
S/o. Gangaiah Naidu

... Appellants

Minor petitioners are represented by their mother Mrs. K.J. Mary Joby

VS.

1. Tablets India Limited, having its office at
R D Building JHAVER Centre, 4th Floor,
No.72, Marshall Road, Egmore,
Chennai 600 008.

2. The TATA AIG General Insurance Company Ltd.,
Motor Third Party Claim Cell, Having its office at
No.403, 2nd Floor, Samson Towers, L.Pantheon Road,



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Egmore, Chennai 600 008

...Respondents

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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 20.09.2022 in M.C.O.P.No.591 of 2019 on the file of the Motor Accident Claims Tribunal (II Additional District and Sessions Court), Tiruvallur at Poonamallee.

For Appellants : Mr. K. Varadhakamaraj
For R1 : Mr.T.Ananthasekar
For R2 : Mr. Michael Visuvasam

JUDGMENT

The appellants are the claimants in M.C.O.P.No.591 of 2019 on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Judge, Tiruvallur at Poonamallee, and they filed the said claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.60,00,000/- for the death of one K.S. Jaganathan (husband of the first claimant, the father of the second and third claimants and the son of the fourth and fifth claimants) in a road accident that took place on 19.10.2019.



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2. The case of the appellants/claimants in a nutshell is as

follows:

2.1. On 19.10.2019, at about 22.00 hours, K.Jaganathan (deceased) was travelling in a Honda Jazz car bearing Registration No.TN 01-BD-1524, owned by the first respondent, on the third main Road, Ambattur Estate. When the car was nearing Telephone Exchange on the same road, the driver of the car, in which the deceased was travelling, drove the vehicle in a rash and negligent manner and hit the centre median, as a result of which, K.S. Jaganathan sustained injuries all over his body. He was immediately rushed to the Government Hospital, Chennai. However, he succumbed to injuries on 24.10.2019.

2.2. According to the claimants the deceased was aged about 44 years and was working as a Sales Man in a Jewellery Shop earning a sum of Rs.30,000/- per month. It is also their contention that the rash and negligent driving of the driver of the first respondent's car, viz., Honda Jazz car bearing Registration No.TN 01-BD-1524, was the cause of the accident and that since the said vehicle was insured with the second respondent, both of them are jointly and severally liable to pay



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compensation to them.

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3. The respondents contested the claim petition by filing their counters.

4. The Tribunal after analysing the evidence on record, directed the second respondent to pay compensation of Rs.17,25,000/- to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. Seeking to enhance the compensation, the present appeal is filed by the claimants under Section 173 of the Motor Vehicles Act.

5. Heard Mr.K. Varadhakamaraj, learned counsel for the appellants, Mr.T. Ananthasekar, learned counsel for the first respondent and Mr. J. Michael Visuvasam, learned counsel for the second respondent.

6. Mr.K. Varadhakamaraj, learned counsel appearing for the appellants contended that the deceased was aged 44 years on the date of accident and that all the claimants were totally dependant on his income.



It is also his contention that the deceased was earning a sum of Rs.30,000/- per month, but the Tribunal had fixed the notional income of the deceased only as Rs.10,000/- per month. 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*. He therefore prayed for enhancement of compensation.

7. Per contra, Mr.T. Ananthasekar, learned counsel appearing for the first respondent and Mr. J. Michael Visuvasam, learned counsel appearing for the second respondent 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 at this stage.

8. It is pertinent to point out that the deceased was aged 44 years on the date of accident and according to the claimants he was the sole bread winner of the family. He was working in a Jewellery Shop as a



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Salesman and therefore, his monthly income is fixed as Rs.15,000/-. To

this sum, 25% 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). Thus, the monthly income of the deceased is fixed at

Rs.18,750/- ($15,000 + 3,750 = 18,750$). Since the deceased had five

dependents, $1/4$ should be deducted towards his personal expenses and

thus it would be a sum of Rs.14,062.50/- ($18,750 \times 3/4 = 14,062.50$). The

age of the deceased was 44 years on the date of accident and the proper

multiplier to be adopted in the instant case is 14, as per the decision in

Sarala 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.18,750/-

After $1/4$ deduction = Rs.14,062.50/-

Loss of dependency :



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= Rs.14,062.50 x 12 x 14

= Rs.23,62,500/-

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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 five dependants, a sum of Rs.2,00,000/- is granted towards loss of consortium (40000 x 5 = 2,00,000). Thus, the claimants are entitled to a total compensation of Rs.25,92,500/- (23,62,500 + 2,00,000 + 15,000 + 15,000= 25,92,500) which is extracted here under.

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	23,62,500/-
2.	Loss of consortium	2,00,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
Total		25,92,500/-

9. Thus, the compensation awarded by the Tribunal is enhanced



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from Rs.17,25,000/- to Rs.25,92,500/- which 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 from Rs.17,25,000/- to Rs.25,92,500/-.

(iii) The appellants / claimants are directed to pay 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 TATA AIG General Insurance Company Ltd., is directed to deposit the enhanced compensation amount i.e., Rs.25,92,500/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till



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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.591 of 2019 on the file of the Motor Accident Claims Tribunal (II Additional District and Sessions Court), Tiruvallur at Poonamallee. The ratio of apportionment made by the Tribunal shall be kept intact.

(v) On such deposit being made, the appellants 1, 4 and 5 are at liberty to withdraw their share as per the apportionment made by the Tribunal after filing a proper petition for withdrawal. Since the appellants 2 and 3 are minor, their shares as per the apportionment made by the Tribunal shall be deposited in a fixed deposit in any one of the Nationalised banks until they attain majority and thereafter they are entitled to receive the amount after following due process of law.

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Index : Yes/No

Speaking/Non-speaking order
bga

To

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2. Tablets India Limited, having its office at
R D Building JHAVER Centre, 4th Floor,
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4. The Section Officer, V.R. Section, Madras High Court, Chennai.

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R.HEMALATHA, J.

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