IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2014 of 2024

1.Nagamani
2. Karunakaran
3. Brinda .... Appellants

vs.

1. Sakthivel

2. TATA AIG General Insurance Co. Limited
2nd Floor, Samson Tower No.403L,
Pathian Road, Egmore,
Chennai 600 008. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 29.11.2022 in M.A.C.T.O.P.357 of 2014 on the file of the Motor Accidents Claims Tribunal, Tiruvallur at Ponneri.

For Appellants	: Ms.A. Subadra
R1	: Dispensed with notice
For R2	: Mr.K. Vinod

J U D G M E N T

The appellants are the claimants in M.A.C.T.O.P. 357 of 2014 on the file of the IV Additional District and Sessions Court, Motor Accidents Claims Tribunal, Tiruvallur at Ponneri. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of M.A.C.T. Rules, seeking compensation of Rs.10,00,000/- for the death of one Subramani (husband of the first claimant, father of the claimants 2 and 3) in a road accident that took place on 09.07.2013.

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

2.1. On 09.07.2013, Subramani (deceased) was travelling as a pillion rider in a Two Wheeler bearing Registration Number TN-09-BQ-3803. The driver of the said two wheeler drove the vehicle in a rash and negligent manner and hit a Two wheeler bearing Registration No.TN-21-AN-1048, as a result of which Subramani fell down and sustained injuries all over his body. He was immediately rushed to the Hospital. However, he succumbed to injuries on 10.07.2013.

3. According to the claimants, the rash and negligent driving of

the rider of the two wheeler bearing Registration Number TN-09-BQ-3803, was the cause of the accident and that since the said vehicle was insured with the second respondent, the TATA AIG 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 vehicle remained absent and was set *ex parte*. The second respondent Insurance Company 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 fastened negligence on the part of the rider of the Two Wheeler bearing Registration Number TN-09-BQ-3803. Since the rider of the two wheeler was not having a valid driving license on the date of accident, the Tribunal directed the second respondent Insurance Company to pay compensation of Rs.8,33,880/- to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, in the first instance, and then recover the same from the first

respondent, the owner of the two wheeler, vide its orders dated 29.11.2022.

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 Mrs. A. Subadra, learned counsel appearing for the appellants and Mr. K. Vinod, learned counsel for the second respondent.

8. Mrs.A. Subadra, learned counsel appearing for the appellants contended that Subramani (deceased) was an agriculturist earning a sum of Rs.1,50,000/- per annum and that the Tribunal had fixed the notional monthly income of the deceased only as Rs.6,600/-, which, according to her, is on the lower side. She therefore, prayed for enhancement of monthly income of the deceased.

9. Per contra, Mr. K.Vinod, learned counsel appearing for the second respondent/Insurance Company 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.

10. The contention of the claimant is that the claimant was an agriculturist earning a sum of Rs.12,500/- per month. He was aged about 53 years. Considering the year of accident, fixing the notional monthly income of the deceased as Rs.12,000/- would meet the ends of justice. As per the decision of the Supreme Court of India in ***National Insurance Co. vs Pranay sethi and others*** reported in ***2017 (2) TNMAC 601***, 10% is added towards future prospects of the deceased. Since the deceased had 3 dependents, 1/3 should be deducted towards his personal expenses. The deceased was aged 53 years on the date of the accident and the proper multiplier to be adopted in the instant case is 11 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.12,000/-

10% Future Prospects = Rs.13,200/-

After 1/3 deduction = Rs.8,800/-

Loss of dependency

= Rs.8,800/- x 12 x 11

= Rs.11,61,600/-

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).

10.1. The enhanced amount under the different heads are detailed hereunder:

S.No.	***Head***	***Amount granted by this court (Rs.)***
1.	Loss of dependency	11,61,600/-
2.	Loss of consortium (Rs.40,000/- x 3)	1,20,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	13,11,600/-

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11. In the result,

i. The Civil Miscellaneous Appeal is partly allowed. No costs.
ii. The compensation awarded by the Tribunal is enhanced from Rs.8,33,880/- to Rs.13,11,600/-.
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 Limited, Chennai, is directed to deposit the enhanced compensation amount i.e., Rs.13,11,600/- (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, in the first instance, to the credit of M.A.C.T.O.P. 357 of 2014 on the file of the IV Additional District and Sessions Court, Motor Accidents

Claims Tribunal, Tiruvallur at Ponneri, within a period of four weeks from the date of receipt of a copy of this order, and then recover the same from the first respondent, the owner of the two wheeler, under the same cause of action. The ratio of apportionment made by the Tribunal shall be kept intact.

v. The appellants/claimants are not entitled to claim any interest for the period of delay of 634 days in filing this appeal, as per the orders of this Court dated 12.07.2024 in C.M.P. No.10310 of 2024.

vi. On such deposit being made, the appellants/claimants are at liberty to withdraw their share as per the apportionment made by the Tribunal after filing a proper petition for withdrawal.

30.08.2024

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

To

1. The IV Additional District and Sessions Judge,
   Motor Accidents Claims Tribunal, Tiruvallur at Ponneri.

2. TATA AIG General Insurance Co. Limited
   2nd Floor, Samson Tower No.403L,
   Pathian Road, Egmore,
   Chennai 600 008.

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

R.HEMALATHA, J.

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