IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1232 of 2023

1.Vanathi
2. Minor Diliban
3. Minor Kanish
(Minor appellants 2 and 3 are represented by their next friend/mother, the first appellant herein .... Appellants

vs.

1.Saravanan

2. Rajasekar

3. Shriram General Insurance Company Limited
Jaipur, Represented by its Managing Director,
having its registered office at
10005, E-8-RIICO Industrial Area, SITA PURA
Jaipur, Rajasthan 32022 ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 19.08.2021 in M.C.O.P.250/2018 on the file of the Motor Accident Claims Tribunal, Karaikal.

For Appellants	:	Mr. K. Varadha Kamaraj
For R1 & R2	:	Ms.D.Kalaivani
For R3	:	Mr. T.K. Premkumar

JUDGMENT

The appellants are the claimants in M.C.O.P.250/2018 on the file of the Motor Accident Claims Tribunal, Karaikal. They filed the claim petition under Section 166(1) of the Motor Vehicles Act, seeking compensation of Rs.32,00,000/- for the death of one Uthirapathi @ Durai (husband of claimant 1; father of claimants 2 and 3) in a road accident that occurred on 16.04.2018.

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

2.1. On 16.04.2018 Uthirapathi @ Durai (since deceased) was riding his two wheeler bearing Registration number PY-02-H-3676 on Thirunallar-Ambagarathur Main Road and at about 08.30 p.m. another two wheeler bearing Registration Number PY-02-P-2945, with wooden planks protruding on both sides of the two wheeler, came in the opposite direction and hit the two wheeler driven by Uthirapathi causing his instantaneous death.

3. According to the claimants, the rash and negligent driving of the driver of the two wheeler bearing Registration Number PY-02-P-2945 was the cause of the accident and that since the said two wheeler was insured with the third respondent, the Shriram General Insurance Company Limited, Jaipur, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the driver of the offending vehicle remained absent and was set *ex parte*. The second and third respondents contested the the claim petition by filing their counter.

5. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the driver of the offending two wheeler bearing Registration Number PY-02-P-2945. Since the driver of the two wheeler did not have a valid driving licence on the date of accident, the Tribunal directed the third respondent Insurance Company to pay compensation of Rs.17,30,208/- 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

respondents 1 and 2, the driver and the owner of the offending two wheeler respectively, under the same cause of action (pay and recover).

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. K. Varadha Kamaraj, learned counsel appearing for the appellants, Ms. D. Kalaivani, learned counsel appearing for the respondents 1 and 2, and Mr. T.K. Premkumar, learned counsel appearing for the third respondent Insurance Company.

8. Mr. K. Varadha Kamaraj, learned counsel appearing for the appellants contended that the deceased was owning a mini tractor earning a sum of Rs.500/- per day. However, the Tribunal fixed the notional monthly income of the deceased as Rs.14,109/- based on the cost inflation index of the year 2018. He, therefore, prayed for enhancement of compensation.

9. Per contra, Ms. D. Kalaivani, learned counsel appearing for the respondents 1 and 2, and Mr. T.K. Premkumar, learned counsel appearing for the third 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 in the present appeal.

10. In the claim petition the claimants have stated that the deceased was owning a Mini Tractor earning a sum of Rs.500/- per day. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.14,109/- based on the Cost Inflation Index of the year 2018. The age of the deceased was 41 years on the date of accident as per his marriage certificate (Ex.P4). Considering the year of accident and the age of the deceased, this Court fixes the notional monthly income of the deceased as Rs.15,000/-. 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,*** 25% is added towards future prospects of the deceased. Since the deceased had three dependents, 1/3 is deducted towards his personal expenses. The proper

multiplier to be adopted in the instant case is 14 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.15,000/-

25% Future Prospects = Rs.18,750/-

After 1/3 deduction = Rs.12,500/-

Loss of dependency

= Rs.12,500/- x 12 x 14

= Rs.21,00,000/-

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*** (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	21,00,000/-
2.	Loss of consortium (Rs.40,000/- x 3)	1,20,000/-

S.No.	***Head***	***Amount granted by this court (Rs.)***
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	22,50,000/-

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 to Rs.22,50,000/-.

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 third respondent, the Shriram General Insurance Company Limited, Jaipur, is directed to deposit the enhanced compensation amount of Rs.22,50,000/- (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, in the first instance, to the credit of M.C.O.P.250/2018 on the file of the Motor Accident Claims Tribunal, Karaikal, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order, and then recover the same from the respondents 1 and 2, the driver and the owner of the offending two wheeler respectively, under the same cause of action (pay and recover).

v. The enhanced compensation amount of Rs.22,50,000/- is apportioned to the claimants as follows:

Vanathi (first claimant)	Rs.4,50,000/- with costs and interest
Minor Diliban (second claimant)	Rs.9,00,000/-
Minor Kanish (third claimant)	Rs.9,00,000/-

vi. On such deposit being made, the first claimant is at liberty to withdraw the same as per the apportionment made by this Court after filing proper petition for withdrawal. Since second and third claimants are minors, their shares may be deposited in anyone of the nationalised banks until they attain majority.

vii. The claimants are not entitled to claim interest for the period of delay of 385 days in filing this appeal.

21.10.2024

Index : Yes/No
Speaking/Non-speaking order

bga

To

1. Motor Accident Claims Tribunal, Karaikal.
2. Shriram General Insurance Company Limited,
   10005, E-8-RIICO Industrial Area, SITA PURA
   Jaipur, Rajasthan 32022
3. The Section Officer, VR Section, Madras High Court, Chennai.

R.HEMALATHA, J.

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