IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.590 of 2024 and
C.M.P.No.5745 of 2024

The Branch Manager
Shriram General Insurance Company Limited,
10003, 8 RIICO Industrual Area, Sitapura,
Jaipur, Rajasthan ... Appellant

vs.

1. Durga Lakshmi
2. Venkatraman ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 13.11.2018 in M.C.O.P.107/2015 on the file of the Principal Subordinate Court, Motor Accident Claims Tribunal, Mayiladuthurai.

For Appellant : Mr.S. Dhakshinamoorthy
For R1 : Mr. T. Padmanabhan
R2 : No appearance.

J U D G M E N T

The appellant, the Shriram General Insurance Company Limited, filed the present appeal questioning the quantum of compensation awarded by the Tribunal in M.C.O.P.107/2015 on the file of the Principal Subordinate Court, Motor Accident Claims Tribunal, Mayiladuthurai.

2. The first respondent/claimant filed a claim petition in M.C.O.P.107/2015 under Section 166(3) of the Motor Vehicles Act before the Principal Subordinate Court, Motor Accident Claims Tribunal, Mayiladuthurai, seeking compensation of Rs.10,00,000/- for the death of her brother in a road accident that occurred on 24.07.2014.

3. The case of the claimant is that on 24.07.2014 Balasubramanian (since deceased) was riding his bicycle on Akkkur Main Road and at about 7.30 a.m., a Mahindra van bearing Registration number TN-09-AD-4023 belonging to one Venkatraman, the second respondent herein, hit him, as a result of which Balasubramanian fell down and sustained injuries all over his body. He was immediately rushed to Government Hospital, Mayiladuthurai. However, he succumbed to injuries on the way to hospital.

4. According to the claimant, the accident took place due to the rash and negligent driving of the driver of the Mahindra van bearing Registration number TN-09-AD-4023 and that since the said van was insured with the present appellant, the Shriram General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to her.

5. In the Tribunal, the owner of the Mahindra van remained absent and was set *exparte*. The appellant/Insurance Company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor vehicles Act.

6. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the driver of the van bearing Registration number TN-09-AD-4023 and directed the appellant Insurance Company to pay compensation of Rs.10,23,000/- to the claimant together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide its orders dated 13.11.2018. The Tribunal also held that the liability of the Insurance

Company and the owner of the lorry are joint and several.

7. Aggrieved over the quantum of compensation awarded by the Tribunal, the present appeal is filed by the appellant / Shriram General Insurance Company Limited

8. Heard Mr.S. Dhakshinamoorthy, learned counsel for the appellant and Mr. T. Padmanabhan, learned counsel for the first respondent/claimant.

9. Mr.S. Dhakshinamoorthy, learned counsel for the appellant Insurance Company contended that the Tribunal had added 30% towards future prospects though the deceased was aged 40 years on the date of accident. He also contended that a sum of Rs.50,000/- is awarded by the Tribunal towards love and affection and Rs.25,000/- towards funeral expenses, which, contravenes the guidelines laid down by the Hon'ble Supreme Court of India in ***National Insurance Co. vs Pranay sethi and others*** reported in ***2017 (2) TNMAC 601.*** He also contended that the claimant, the sister of the deceased, was not depending on the income of

her brother. He therefore prayed for setting aside the compensation awarded by the Tribunal.

10. Per contra, Mr. T. Padmanabhan, learned counsel for the first 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.

11. It is seen from the records that Balasubramanian died as a bachelor and he was working as an agricultural labourer. According to the claimant, her brother was earning a sum of Rs.15,000/- per month. In the absence of income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.8,000/-. It is pertinent to point out that the claimant is the married sister of the deceased Balasubramanian. The contention of the learned counsel for the appellant is that since the claimant was not depending on the income of the deceased, she cannot claim any amount towards compensation for the death of her brother. It is to be seen that the deceased did not have a family and he would have definitely taken care of his only sister. As far as our Country is

concerned, a brother is the backbone of the family and is always considered next to father. Brothers provide emotional and practical support to their younger siblings. In the instant case, the deceased did not have a separate family. His parents also predeceased him. Therefore, the claimant can sustain the petition seeking compensation for the death of her brother.

12. The claimant has not adduced any documentary evidence to show the actual income of the deceased. The accident took place in the year 2014 and the deceased was aged 40 years. Considering the same,the notional monthly income fixed by the Tribunal as Rs.8,000/- seems to be in order. The Tribunal had added 30% towards future prospects. As per the decision of the Supreme Court of India in ***National Insurance Co. vs Pranay sethi and others*** (cited supra), 25% is added towards future prospects of the deceased. Since the deceased died as a bachelor, 1/2 should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 15 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.8,000/-

25% Future Prospects = Rs.10,000/-

After 1/2 deduction = Rs.5,000/-

Loss of dependency

= Rs.5,000/- x 12 x 15

= Rs.9,00,000/-

In addition to that the claimant is entitled to Rs.40,000/-, 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).

12.1. The modified amount under the different heads are detailed hereunder:

S.No.	***Head***	***Amount granted by this court (Rs.)***
1.	Loss of dependency	9,00,000/-
2.	Loss of consortium	40,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	9,70,000/-

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

13. In the result,

i. The Civil Miscellaneous Appeal is allowed. No costs. Consequently connected miscellaneous petition is closed.

ii. The quantum of compensation awarded by the Tribunal is scaled down to Rs.9,70,000/- from Rs.10,23,000/-.

iii. The appellant/Insurance company is directed to deposit a sum of Rs.9,70,000/- (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, to the credit of M.C.O.P.107/2015 on the file of the Principal Subordinate Court, Motor Accident Claims Tribunal, Mayiladuthurai. The appellant Insurance Company is at liberty to withdraw the amount, deposited by them, over and above the compensation awarded by this court.

iv. On such deposit being made, the first respondent/claimant is at liberty to withdraw her share after filing a proper petition for withdrawal.

06.09.2024

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

To

1. The Principal Subordinate Judge,
Motor Accident Claims Tribunal, Mayiladuthurai.

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

R.HEMALATHA, J.

bga

C.M.A.No.590 of 2024 and
C.M.P.No.5745 of 2024

06.09.2024