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CMA.No.586 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.586 of 2023

1. Dhanalatchumi
2. K.Vignesh
3. Minor. R.Vidhya
4. Minor. R.Ramya
5. Indhirani

... Appellants

(Minor appellants 3 and 4 represented
by their Next friend / Guardian mother
Dhanalatchumi, first appellant)

vs.

1. G.Thirumal

2. The Manager,
Cholamandalam MS General Insurance Company Limited,
II Floor, Shaw Wallace Building,
No.154, Thambu Chetty Street,
Parry's Corner, Chennai - 600 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 11.08.2022 in M.C.O.P.No.1054 of 2019 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Villupuram.



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For Appellants : Ms.Ramya V.Rao
For R1 : No appearance
For R2 : Mr.J.Michael Visuvasam

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.1054 of 2019 on the file of the Motor Accident Claims Tribunal / Special Sub Judge, Villupuram. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.50,00,000/- for the death of one Kuppan, (the husband of the first claimant, father of the claimants 2 to 4 and son of the fifth claimant) in a road accident that took place on 15.10.2019.

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

On 15.10.2019, Kuppan (deceased) was travelling as a pillion rider in a motorcycle bearing Registration Number TN-15-B-9812 near J.J. Grounds, Villupuram and at about 21.20 hours a speeding Maruti Dzire Car bearing Registration Number TN-22-BS-9438, belonging to the first respondent hit the two wheeler, driven by Kuppan (deceased) as a



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result of which, Kuppan fell down and died on the spot.

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3. According to the claimants, the rash and negligent driving of the driver of the Maruti Dzire Car bearing Registration Number TN-22-BS-9438 was the cause of the accident and that since the said vehicle was insured with the second respondent, the Cholamandalam MS General Insurance Company Limited, the owner and the insurer of the car are jointly and severally liable to pay compensation to them.

4. In the Tribunal, the first respondent remained absent and was set *ex parte*. 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, awarded a compensation of Rs.19,62,500/- 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 11.08.2022.



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6. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellants / claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, seeking enhancement of compensation amount.

7. Heard Ms.Ramya V.Rao, learned counsel appearing for the appellants and Mr.J.Michael Visuvasam, learned counsel for the second respondent.

8. In the claim petition, it is contended that the deceased was a bus conductor in a private concern earning a sum of Rs.30,000/- per month. In the absence of income proof, the Tribunal fixed the monthly income of the deceased as Rs.11,000/-. It is pertinent to point out that the accident took place in the year 2019 and in the facts and circumstances, this Court is of the opinion that fixing the notional monthly income of the deceased at Rs.15,000/- 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**, 25% should be added towards future prospects of the deceased. Since there are five



dependents, 1/4th of the deceased's income should be 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.3,750/-

Total = Rs.15,000/- + Rs.3,750/- = Rs.18,750/-

Loss of dependency :

= Rs.18,750/- x 12 x 14 x 3/4

= Rs.23,62,500/-

In addition to that the claimants are 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). 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.



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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs.23,62,500/-
2.	Loss of consortium (Rs.40,000/- x 5)	Rs.2,00,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.25,92,500/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.19,62,500/- 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.19,62,500/- 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 Cholamandalam MS General Insurance



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Company Limited is directed to deposit the 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 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.1054 of 2019 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Villupuram.

- v. On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

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



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To

1.The Motor Accidents Claims Tribunal,
Special Sub Judge, Villupuram.

2. The Manager,
Cholamandalam MS General Insurance Company Limited,
II Floor, Shaw Wallace Building,
No.154, Thambu Chetty Street,
Parry's Corner, Chennai - 600 001.

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



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R.HEMALATHA, J.

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