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C.M.A.No.522 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.522 of 2023

1. P.Kumaran
2. K.Abirami

... Appellants

VS.

1. S.Veerasekar

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 30.11.2022 in M.C.O.P.1375 of 2019 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

For Appellants : Ms.Ramya V. Rao

For R2 : Ms.R.Sreevidhya



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JUDGMENT

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The appellants are the claimants in M.C.O.P.1375 of 2019 on the file of the Motor Accident Claims Tribunal, Cuddalore. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.25,00,000/- for the death of their minor daughter Ashmita, in a road accident that occurred on 17.05.2019.

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

On 17.05.2019, Ashmita (since deceased) aged 6 years was travelling as a pillion rider in a two wheeler bearing Registration Number TN-91-E-2810 on Cuddalore - Chidambaram Main Road and at about 8.00 a.m., a speeding Honda Dio two wheeler bearing Registration Number TN-31-CA-4756 belonging to the first respondent, hit the two wheeler, as a result of which, Ashmita fell down and sustained grievous injuries all over her body. She was immediately rushed to Government Head Quarters Hospital, Cuddalore. However, she died on the way to hospital.



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3. According to the claimants, the rash and negligent driving of the rider of the two wheeler bearing Registration Number TN-31-CA-4756 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 are jointly and severally liable to pay compensation to them.

4. In the Tribunal the owner of the two wheeler 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, fastened negligence on the part of the rider of the two wheeler bearing Registration Number TN-31-CA-4756. Since the rider of the two wheeler did not have a driving license, the Tribunal directed the second respondent Insurance Company to pay compensation of Rs.5,00,000/- to the claimants together with interest at the rate of 8% per annum from the date of petition till the date of realisation, in the first instance and then recover



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the same from the owner of the vehicle, vide its orders dated 30.11.2022.

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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 Ms.Ramya V. Rao, learned counsel appearing for the appellants and Ms.R.Sreevidhya, learned counsel appearing for the second respondent.

8. Ms.Ramya V. Rao, learned counsel for the appellants contended that the Tribunal has not awarded just compensation and therefore, prayed for enhancement of compensation.

9. Per contra, Ms.R.Sreevidhya, 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.



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10. In ***Kishan Gopal and another vs. Lala and others*** reported in **2013 (2) TN MAC 358**, the Hon'ble Supreme Court fixed the notional income of a minor child as Rs.30,000/- per annum and granted a sum of Rs.50,000/- under the other conventional heads. The accident in ***Kishan Gopal and another vs. Lala and others*** (cited supra) happened in the year 1992. In the present case, considering the passage of time and the age of the victim child, fixing Rs.5,000/- per month as notional income of the deceased would meet the ends of justice. The proper multiplier to be adopted in the instant case is 15, as per the decision in ***Sarla 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 Monthly Income = Rs.5,000/- x 12 = Rs.60,000/-

Loss of dependency :

= Rs.60,000/- x 15

= Rs.9,00,000/-

In addition to that the claimants are entitled to Rs.80,000/- (40,000 x 2), Rs.15,000/- and Rs.15,000/- towards "Loss of Consortium, Funeral



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Expenses and Loss of Estate" respectively as per the decision in *National Insurance Company Limited Vs. Pranay Sethi and others* (cited supra).

Thus, the claimants are entitled to a total compensation of Rs.10,10,000 /- (9,00,000 + 80,000 +15,000 +15,000 = 10,10,000) as shown in the following tabular column.

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	9,00,000/-
2.	Loss of consortium	80,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
Total		10,10,000/-

11. Thus, the compensation awarded by the Tribunal is enhanced to Rs.10,10,000/- which would carry interest at the rate of 7.5% per annum.

12. In the result,

- The Civil Miscellaneous Appeal is partly allowed. No costs.
- The compensation awarded by the Tribunal is enhanced to



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Rs.10,10,000/-.

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- iii. The appellants / claimants are directed to pay the 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 / Cholamandalam MS General Insurance Company Limited is directed to deposit a sum of Rs.10,10,000/- (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 / uploading of this order to the credit of M.C.O.P.1375 of 2019 on the file of the Motor Accident Claims Tribunal, Cuddalore, in the first instance and then recover the same from the owner of the vehicle under the same cause of action.
- v. On such deposit being made, the appellants / claimants are at liberty



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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

To

1. The Motor Accident Claims Tribunal,
Principal District Court, Cuddalore.
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, V.R. Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

mtl

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