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C.M.A.No.1072 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

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THE HON'BLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.1072 of 2024

Kanniammal (Died)

1.Kuppusamy

2.Dhanalakshmi

... Appellants

Vs.

1.E.Karthik

2.The New India Assurance Company Limited,

Motor Third Party Claims,

No.232, Bombay Mutual Building,

6th Floor, N.S.C.Bose Road,

Chennai - 600 001.

... Respondents

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree dated 10.08.2023 made in M.C.O.P. No.549 of 2019 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Appellants : Ms.A.Subadra

For Respondents : Mr.R.Neethiperumal
for R2

R1 - Dispensed with



JUDGMENT

The appellants are the claimants in M.C.O.P. 549 of 2019 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.65,00,000/- for the death of one Sathish Kumar (son of appellant 1; brother of appellant 2) in a road accident that took place on 19.11.2018.

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

On 19.11.2018, Sathish Kumar (deceased) was riding his two-wheeler bearing registration No.TN 09 BL 3417 on Vallipuram - Tirukalukundram road. When he was nearing Narapakkam, another two-wheeler bearing registration No.TN 11 F 0857 came in the opposite direction and hit his two-wheeler, as a result of which, he fell down and sustained injuries all over his body. He was immediately rushed to Chengalpattu Government Hospital. However, he died on the way to Hospital.



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3. According to the claimants, the rash and negligent driving of the driver of the two-wheeler bearing registration No.TN 11 F 0857 was the cause of the accident and since the owner of the two-wheeler has insured the vehicle with the second respondent, the New India Assurance Company Limited, both the owner and the Insurance Company 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 sum of Rs.23,78,000/- towards compensation to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide its order dated 10.08.2023. The Tribunal also held that the liability of the owner and the Insurance Company is joint and several.



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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.A.Subadra, learned counsel appearing for the appellants and Mr.R.Neethiperumal, learned counsel for the second respondent, the New India Assurance Company Limited.

8. Ms.A.Subadra, learned counsel appearing for the appellants / claimants contended that though the deceased had completed B.Sc (Visual Communication) and was working as a Designer in Nittany Company, Kottivakkam, the Tribunal has fixed only a sum of Rs.15,000/- as notional monthly income of the deceased. She, therefore, prayed for enhancement of compensation.

9. The claimants in the instant case had filed the Course Completion Certificate in B.Sc (Visual Communication) of the deceased (Ex.P7). Though it was contended that the deceased was working as a Designer in Nittany Company, Kottivakkam, the claimants had not substantiated the



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same by adducing acceptable oral or documentary evidence. In the circumstances, the Tribunal fixed the notional monthly income of the deceased as Rs.15,000/-. Since the deceased had completed B.Sc (Visual Communication), fixing his notional monthly income at Rs.16,000/- would meet the ends of justice in the absence of reliable proof. 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***, 40% is added towards future prospects of the deceased. The deceased died as a bachelor and hence, 50% is deducted towards his personal expenses. The deceased was aged about 23 years on the date of the accident and the proper multiplier to be adopted in the instant case is 18 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.16,000/-

Adding 40% Future Prospects = Rs.22,400/-

After 1/2 deduction = Rs.11,200/-



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Loss of dependency:

$$= \text{Rs.}11,200/- \times 12 \times 18$$

$$= \text{Rs.}24,19,200/-$$

In addition to that the claimants are entitled for Rs.80,000/- (Rs.40,000/- x 2), 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.25,29,200/- (24,19,200 + 80,000 + 15,000 + 15,000) as shown in the following tabular column.

<i>S.No.</i>	<i>Heads</i>	<i>Amount granted by this Court in Rs.</i>
1.	Loss of dependency	24,19,200
2.	Loss of Consortium(Rs.40,000/- x 2)	80,000
3.	Loss of Estate	15,000
3.	Funeral Expenses	15,000
	Total	25,29,200

10. In the result,

- The Civil Miscellaneous Appeal is partly allowed. No costs.
- The compensation awarded by the Tribunal is enhanced from Rs.23,78,000/- to Rs.25,29,200/-.



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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, New India Assurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.25,29,200/- (less the amount already deposited, if any) 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.549 of 2019 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

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 sister of the deceased is entitled for Rs.10,00,000/- out of the award amount enhanced by this Court and the father of the deceased is entitled for the remaining amount



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awarded by this Court (i.e., Rs.15,29,200/-) together with interest and
Costs for the total award amount enhanced by this Court.

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Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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R. HEMALATHA. J.,

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To

1. The Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.
2. The Section officer, Record Section, High Court of Madras.

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