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CMA.No.1856 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.1856 of 2022

1. K.Palanisamy
2. Jakkamma

... Appellants

VS.

1. R.Gokulanathan
2. The Oriental Insurance Co. Ltd.,
Dhiya Towers, 2nd Floor,
Shevapet Main Road, Salem.
3. Thavamani

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 21.08.2019 in M.C.O.P.1822/2018 on the file of the Motor Accident Claims Tribunal, Special District Court , Salem.

For Appellants	: Mr.S.P.Yuvaraj
For R1	: Mr.P.Srinivasan
For R2	: Mr.N.Sampath
For R3	: No appearance

J U D G M E N T

The appellants are the claimants in M.C.O.P.1822/2018 on the file of the Motor Accident Claims Tribunal, Salem. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking



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compensation of Rs.10,00,000/- for the death of their mother Muthammal in a road accident that occurred on 16.07.2018.

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

On 16.07.2018, Muthammal (deceased) was walking along Mallur - Salem main road and at about 10.45 a.m., a speeding two wheeler bearing Registration number TN 90 C 1224, hit her, resulting in her instantaneous death.

3. According to the claimants, the rash and negligent driving of the rider of the two wheeler bearing Registration number TN 90 C 1224 was the cause of the accident and that since the said vehicle was insured with the second respondent, the Oriental 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 vehicle remained absent and was set *exparte*. The second respondent, Insurance Company resisted the claim petition on all the grounds available to the insurer under Section



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170 of the Motor Vehicles Act.

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5. The Tribunal after analysing the evidence on record fastened negligence on the part of the deceased and the rider of the two wheeler in the ratio 85:15 and awarded compensation of Rs.50,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The Tribunal also held that the liability of the owner of the two wheeler and the insurer is joint and several.

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.

7. Heard Mr.S.P.Yuvaraj, learned counsel for the appellants, Mr.P.Srinivasan, learned counsel for the first respondent and Mr.N.Sampath, learned counsel for the second Respondent.

8. Though notice was served on the third respondent and his name is also printed in the cause list, there is no representation on his behalf.



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9. Mr.S.P.Yuvaraj, learned counsel appearing for the appellants contended that Muthammal (deceased) was aged 83 years on the date of accident and was working as an agricultural labourer, earning a sum of Rs.15,000/- p.m. However, the Tribunal had fixed a meagre sum of Rs.3,000/- as her monthly notional income. He therefore prayed for enhancement of compensation.

10. Per contra Mr.N.Sampath, learned counsel appearing for the second respondent contended that the Award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

11. Negligence:

It is seen from the records that Muthammal (deceased) was aged 83 years on the date of accident. While she was crossing the road, the rider of the two wheeler bearing Registration number TN 90 C 1224 drove the vehicle in a rash and negligent manner and hit her, causing her



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instantaneous death. The evidence of Govindasamy (P.W.2), eyewitness to the occurrence is clear as to the rash and negligent riding of the rider of the two wheeler. Nothing useful was suggested to him during the course of cross examination to discredit or disbelieve his versions. In the circumstances, fastening 15% of contributory negligence on the part of Muthammal (deceased), is erroneous and the same is hereby set aside.

12. Quantum:

According to the claimants, Muthammal (deceased), aged 83 years, was working as an agricultural labourer, earning a sum of Rs.15,000/- p.m. However, in the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.3,000/-. It is pertinent to point out that the accident took place in the year 2018. Considering the age of the deceased (83 years) and the year of accident, this Court is of the opinion that fixing notional monthly income of the deceased as Rs.6,000/- would meet the ends of justice. Since the claimants are grown up sons and daughter, 1/2 is deducted towards her personal expenses. The proper multiplier to be adopted in the instant case is 5 as per the decision rendered in *Sarla Verma and others vs. Delhi*



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***Transport Corporation and another* reported in (2009) 6 SCC 121.**

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Notional Income = Rs.6,000/-

After 1/2 deduction = Rs.3,000/-

Loss of dependency:

= Rs.3,000/- x 12 x 5

= Rs.1,80,000/-

In addition to that the claimants are entitled to Rs.80,000/- (40,000/-x2), Rs.15,000/- and Rs.15,000/- towards 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.2,90,000/- (1,80,000 + 80,000 + 15,000+15,000 = 2,90,000) as shown in the following tabular column:

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs. 1,80,000 /-
2.	Loss of consortium (Rs.40,000/- x 2)	Rs.80,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.2,90,000/-



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13. Thus, the compensation awarded by the Tribunal is enhanced to Rs.2,90,000/- that would carry interest at the rate of 7.5% per annum.

14. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.2,90,000/-.
- iii. 15% Contributory negligence fastened on the part of Muthammal (deceased) is set aside.
- iv. 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.
- v. The liability of the owner of the two wheeler and the insurer, Oriental Insurance Company Limited is joint and several and the second respondent / Oriental Insurance Company Limited is



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directed to deposit the enhanced compensation amount i.e., Rs.2,90,000/- (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.1822/2018 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

vi. On such deposit being made the appellants, claimants are permitted to withdraw the same with accrued interest and costs, after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

vii. The appellants, claimants are not entitled to claim any interest for the period of delay of 773 days in filing the appeal.

22.10.2024

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

To

1. The Motor Accidents Claims Tribunal,
Special District Court,
Salem.



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

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R.HEMALATHA, J.

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