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CMA.No.1199 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1199 of 2024

1. Kasthuri
2. Venkatesan

... Appellants

vs.

1. Thanjiyappan
2. Chola MS General Insurance Company Limited,
2nd Floor, Shaw Wallace Building,
No.154, Thambu Chetti Street,
Parrys Corner, Chennai 600 001

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 24.04.2023 in M.C.O.P.464 of 2019 on the file of the I Additional District and Sessions Court, Motor Accidents Claims Tribunal, Vellore.

For Appellants : Mr. R. Nalliyappan

R1 : Notice dispensed with.

For R2 : Mrs. R. Sreevidhya



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J U D G M E N T

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The appellants are the claimants in M.C.O.P.464 of 2019 on the file of the I Additional District and Sessions Court, Motor Accidents Claims Tribunal, Vellore. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.30,00,000/- for the death of their son Umapathi in a road accident that took place on 01.05.2019.

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

2.1. On 01.05.2019 Umapathi (deceased) was riding his two wheeler with one Ranganathan as a pillion rider on Kasikuttai-Senur Road. At about 02.00 p.m., a Ashok Leyland Dost goods carriage vehicle bearing Registration Number TN 23 CJ 2405, belonging to the first respondent, hit the two wheeler driven by Umapathi, as a result of which he sustained injuries all over his body and died on the spot.

3. According to the claimants, the rash and negligent driving of the driver of the Ashok Leyland Dost goods carriage vehicle bearing



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Registration Number TN 23 CJ 2405, was the cause of the accident and that since the said vehicle was insured with the second respondent, the Chola 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 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 fixed 10% contributory negligence on the part of the deceased and directed the second respondent to pay compensation of Rs.17,46,400/- (90% on the total compensation of Rs.19,40,400/-) to the appellants/claimants together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation. The Tribunal also held that the liability of the respondents are 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, 1988.

7. Heard Mr. R. Nalliyappan, learned counsel appearing for the appellants and Mrs. R. Sreevidhya, learned counsel for the second respondent.

8. Mr. R. Nalliyappan, learned counsel appearing for the appellants contended that the Tribunal though fixed negligence on the part of the driver of the Ashok Leyland Dost goods carriage vehicle bearing Registration Number TN 23 CJ 2405, had wrongly deducted 10% towards contributory negligence on the part of the rider of the two wheeler on the ground that he was not wearing a helmet at the time of accident. He further contended that Umapathi (deceased) had passed Diploma Course in Mechanical Engineering and was working in Honda Company, Sriperumbudur, as a HDT Trainee earning a sum of Rs.13,000/- per month. However, the Tribunal had fixed the notional monthly income of the deceased only as Rs.12,000/-. He therefore, prayed for enhancement



of the monthly income of the deceased.

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9. Per contra, Mrs. R. Sreevidhya, learned counsel appearing for the second respondent/Insurance Company 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.

10. It is seen from a copy of the FIR (Ex.P1) that the driver of the Ashok Leyland Dost goods carriage vehicle bearing Registration Number TN 23 CJ 2405 was the wrong doer and the claimants have also examined one Ranganathan (P.W.2), who is an eye witness to the occurrence. When the Tribunal had come to the conclusion that the driver of the Ashok Leyland Dost goods carriage vehicle bearing Registration Number TN 23 CJ 2405 was rash and negligent in driving his vehicle, it should not have fixed contributory negligence on the part of the deceased on the ground that he was not wearing a helmet. In the circumstances, the contributory negligence fixed on the part of the deceased is hereby set aside.



10.1. According to the claimants, the deceased had completed

Diploma Course in Mechanical Engineering and was working in Honda Company, Sriperumbudur, as a HDT Trainee earning a sum of Rs.13,000/- per month. Since the claimants did not adduce any documentary evidence to substantiate the same, the Tribunal fixed the notional monthly income of the deceased as Rs.12,000/-. The accident took place in the year 2019 and the age of the deceased was 22 years at the time of accident. In the circumstances, this Court is of the view that fixing the notional income at Rs.13,000/- per month 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**, 40% 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 deceased was aged 22 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**.



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Calculation

Notional Income = Rs.13,000/-

40% Future Prospects = Rs.18,200/-

After 1/2 deduction = Rs.9,100/-

Loss of dependency

= Rs.9,100/- x 12 x 18

= Rs.19,65,600/-

In addition to that the claimants are entitled to Rs.80,000/- (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).

10.2. The enhanced amount under the different heads are detailed hereunder:

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	19,65,600/-
2.	Loss of consortium (Rs.40,000/- x 2)	80,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	20,75,600/-

This amount shall carry interest at the rate of 7.5% per annum from the



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date of claim petition till the date of deposit.

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11. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The orders passed by the Tribunal fixing contributory negligence on the part of the deceased to the extent of 10% is set aside.
- iii. The compensation awarded by the Tribunal is enhanced from Rs.17,46,400/- to Rs.20,75,600/-.
- 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 second respondent, the Chola MS General Insurance Company Limited, Chennai, is directed to deposit the enhanced compensation amount i.e., Rs.20,75,600/- (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 to the credit of MCOP.No.464 of 2019 on the file of the I Additional District and Sessions Court, Motor Accidents Claims Tribunal, Vellore, within a



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period of four weeks from the date of receipt of a copy of this order.

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The ratio of apportionment made by the Tribunal shall be kept intact.

vi. On such deposit being made, the appellants are at liberty to withdraw their share as per the apportionment made by the Tribunal after filing a proper petition for withdrawal.

vii. The appellants/claimants are not entitled to claim any interest for the period of delay of 228 days in filing this appeal, as per the orders of this Court dated 25.04.2024 in C.M.P. No.7134 of 2024.

03.09.2024

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

To

1. The I Additional District and Sessions Judge, Motor Accidents Claims Tribunal, Vellore
2. Chola MS General Insurance Company Limited
2nd Floor, Shaw Wallace Building, No.154, Thambu Chetti Street,
Parrys Corner, Chennai 600 001
3. The Section Officer, VR Section, Madras High Court, Chennai.

R.HEMALATHA, J.



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