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CMA.No.1132 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1132 of 2024

1. Indhirani
2. Sridevi
3. Sridhar
4. Latha

.... Appellants

vs.

1. A.M.V. Jayaraman
2. United India Insurance Company Limited,
Divisional Office,
1171, Mutthiah Complex
Mettur Road, Erode.
3. Srinivasan
4. The Oriental Insurance Company Limited,
CBO I Salem,
Siva Complex 2nd Floor,
22-C, Sarada College Main Road,
Salem

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 01.02.2024 in



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M.C.O.P.No.589/2023 on the file of the Motor Accident Claims Tribunal,
Salem.

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For Appellants : Mr.H. Manojin
R1, R3 and R4 : No appearance
For R2 : Mrs. R. Rathna Thara

JUDGMENT

The appellants are the claimants in M.C.O.P.No.589/2023 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 compensation of Rs.50,00,000/- for the death of one Vellaiyagounder (husband of claimant 1; father of claimants 2 to 4) in a road accident that occurred on 06.02.2023.

2. According to the claimants, on 06.02.2023, Vellaiyagounder (since deceased) was travelling as a pillion rider in a two wheeler bearing Registration Number TN-3-AD-3933 on Kollapatty branch road and at about 8.30 a.m., a speeding bus bearing Registration Number TN-86-E-5699 hit the two wheeler as a result of which Vellaiyagounder 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 bus bearing Registration Number TN-86-E-5699, was the cause of the accident and that since the said vehicle was insured with the second respondent, the United India Insurance Company Limited, Erode, the owner and the insurer are jointly and severally liable to pay compensation to them. The respondents 3 and 4 (owner and insurer of the motorcycle) were also added as parties to the claim petition.

4. In the Tribunal the owners of the bus and the motorcycle remained absent and were set *ex parte*. The second and fourth respondents resisted the claim petition by filing their respective counters.

5. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the driver of the bus bearing Registration Number TN-86-E-5699, and directed the second respondent, the insurer of the said bus, to pay compensation of Rs.13,15,000/- to the claimants 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 Insurance Company and the owner of the bus is joint and several.



The claim against the respondents 3 and 4 was dismissed by the Tribunal.

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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 Mr.H. Manojin, learned counsel appearing for the appellants and Ms.R. Rathna Thara, learned counsel appearing for the second respondent Insurance Company.

8. Mr.H. Manojin, learned counsel appearing for the appellants contended that the deceased was doing catering business earning a sum of Rs.50,000/- per month. However, the Tribunal fixed the notional monthly income of the deceased only as Rs.10,000/- including future prospects. He therefore prayed for enhancement of compensation.

9. Per contra, Ms.R. Rathna Thara, 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 in the present appeal.

10. Though it is contended that Vellaiyagounder (deceased) was doing catering business earning a sum of Rs.50,000/-, no satisfactory evidence was adduced by the claimants. The deceased, in the instant case, was aged 47 years on the date of accident. Considering the year of accident and the age of the deceased, this Court fixes the notional monthly income of the deceased as Rs.18,000/-. 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% is added towards future prospects of the deceased. Since the claimants 2 to 4 are grown up son and daughters of the deceased, 1/3 is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 13 as per the decision rendered in *Sarla Verma and others vs. Delhi Transport Corporation and another* reported in **(2009) 6 SCC 121**.

Calculation



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Notional Income = Rs.18,000/-

25% Future Prospects = Rs.22,500/-

After 1/3 deduction = Rs.15,000/-

Loss of dependency

= Rs.15,000/- x 12 x 13

= Rs.23,40,000/-

In addition to that the claimants are entitled to Rs.1,76,000/- (44,000 x 4), Rs.16,500/- and Rs.16,500/- 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).

10.1. 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	23,40,000/-
2.	Loss of consortium (Rs.44,000/- x 4)	1,76,000/-
3.	Funeral expenses	16,500/-
4.	Loss of Estate	16,500/-
	Total	25,49,000/-



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This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.25,49,000/-.
- 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 United Insurance Company Limited, Erode, is directed to deposit the enhanced compensation amount of Rs.25,49,000/- (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 to the credit of



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M.C.O.P.No.589/2023 on the file of the Motor Accident Claims Tribunal, Salem, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order. The apportionment made by the Tribunal shall be kept intact.

- v. On such deposit being made, the claimants are at liberty to withdraw the same after filing proper petition for withdrawal.

24.10.2024

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

To

1. Motor Accident Claims Tribunal, Salem.
2. United India Insurance Company Limited,
Divisional Office,
1171, Mutthiah Complex
Mettur Road, Erode.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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