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CMA.No.1859 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1859 of 2024

1.B.Latha

2.B.Santhiya

3.Minor. B.Priyadharshini
(minor represented by her mother
and natural guardian Latha)

... Appellants

vs.

1.S.Rajendran

2.The New India Insurance Company Limited,
Divisional Office, Jerome Building,
Fort Station Road, Trichy, Having Branch
at Bagavathi Complex,
Aswin Sweets, Opp. New Bus Stand,
Perambalur.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 30.11.2021 in M.C.O.P.587 of 2018 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.



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For Appellants : Mr.S.P.Yuaraj
For R2 : Ms.R.Rathnathara

J U D G M E N T

The appellants are the claimants in M.C.O.P.587 of 2018 on the file of the Motor Accident Claims Tribunal, Perambalur. They filed the claim petition under Section 163 and 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.50,00,000/- for the death of one Baskar, (husband of the first claimant and father of claimants 2 and 3) in a road accident that took place on 09.04.2018.

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

On 09.04.2018, Baskar (since deceased) was riding his two wheeler bearing Registration Number TN-81-Z-4492 on Trichy – Tanjore Main Road. When he was nearing Devarayaneri bus stop, a Tata Indigo ECS Car bearing Registration Number TN-51-AB-4768 belonging to the first respondent hit the two wheeler driven by Baskar (deceased), as a result of which, he sustained injuries all over his body. He was



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immediately rushed to Government Hospital, Thuvakudi. However, he died on the way to the hospital.

3. According to the claimants, the rash and negligent driving of the driver of the car bearing Registration Number TN-51-AB-4768 was the cause of the accident and that since the said vehicle was insured with the second respondent, the New India Insurance Company Limited, the owner of the vehicle and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the owner of the car remained absent and was set *ex parte*. The second respondent, the United India Insurance Company Limited 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 90% negligence on the part of the driver of the car bearing Registration Number TN-51-AB-4768 and 10% negligence on the part of the deceased as he did not have a valid driving licence and awarded a compensation of



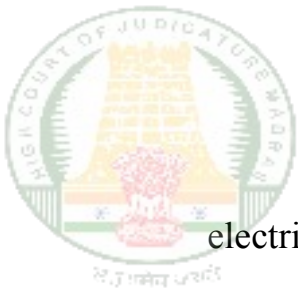
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Rs.11,71,800/- (after deducting 10% contributory negligence) together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide its orders dated 30.11.2021.

6. Aggrieved over the quantum of compensation awarded by the Tribunal and challenging 10% contributory negligence fastened on the part of the deceased, the appellants / claimants have filed the present appeal under Section 173 of the Motor Vehicles Act.

7. Heard Mr.S.P.Yuaraj, learned counsel appearing for the appellants and Ms.R.Rathnathara, learned counsel appearing for the second respondent.

8. Mr.S.P.Yuaraj, learned counsel appearing for the appellants would contend that when the Tribunal had come to a conclusion that the driver of the car was at fault, ought not to have fixed 10% contributory negligence on the part of the deceased solely on the ground that the deceased was not in possession of a valid driving licence on the date of the accident. He also contended that the deceased was working as an



electrician in a private concern earning a sum of Rs.25,000/- per month.

However, the Tribunal fixed the notional monthly income of the deceased only as Rs.10,000/-, which, according to him, is very meagre. He therefore, prayed for enhancement of the notional monthly income of the deceased.

9. Per contra Ms.R.Rathnathara, 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 at this stage.

10. The FIR (Ex.P1) was registered against the driver of the car and the police after conducting investigation had laid a final report against the driver of the car. Mere non possession of driving license cannot be a ground to fasten contributory negligence especially when there is nothing on record to show that the rider of the two wheeler also contributed to the accident. In the circumstances, fastening 10% of contributory negligence on the part of the rider of the two wheeler



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(deceased) cannot be sustained.

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11. According to the claimants, the deceased was working as an electrician in a private concern earning a sum of Rs.25,000/- per month. However, no oral / documentary evidence was adduced by them to substantiate the same. The Income Tax Returns filed by the claimants pertain to the Assessment Year 2018-2019. The accident took place on 09.04.2018 and therefore, the Income Tax Returns for the Assessment Year 2018-2019 cannot be relied upon for the purpose of fixing notional income of the deceased. However, considering the age of the victim and the year of the accident, this Court is of the opinion that fixing notional monthly income of the deceased at Rs.15,000/- 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**, 10% is added towards future prospects of the deceased. Since there are three dependents, 1/3rd of the deceased's income should be deducted towards his personal expenses. The deceased was aged 51 years on the date of accident and the proper multiplier to be adopted in the instant case



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is 11 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.15,000/-

10% Future Prospects = Rs.16,500/-

After 1/3rd deduction = Rs.11,000/-

Loss of dependency

= Rs.11,000/- x 12 x 11

= Rs.14,52,000/-

In addition to that the claimants are entitled to Rs.1,20,000/- (40,000 x 3), 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.16,02,000/- (14,52,000 + 1,20,000 + 15,000 + 15,000= 16,02,000) 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.14,52,000/-



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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
2.	Loss of consortium (Rs.40,000/- x 3)	Rs.1,20,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.16,02,000/-

12. Thus, the compensation awarded by the Tribunal is enhanced from Rs.11,71,800/- to Rs.16,02,000/- which would carry interest at the rate of 7.5% per annum.

13. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The orders passed by Tribunal fixing contributory negligence on the part of the deceased is set aside.
- iii. The compensation awarded by the Tribunal is enhanced from Rs.11,71,800/- to Rs.16,02,000/-.



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iv. 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.

v. The second respondent, the New India Insurance Company Limited, is directed to deposit the enhanced compensation amount i.e., Rs.16,02,000/- (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 to the credit of M.C.O.P.587 of 2018 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

vi. Apportionment :

1st claimant / Wife	Rs.4,02,000/- (with interest and costs)
2nd claimant / Daughter	Rs.6,00,000/-
3rd claimant / Daughter (Minor)	Rs.6,00,000/-



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vii.The compensation amount of the minor claimant 3 shall be deposited in any one of the Nationalised Bank till she attains majority. The first and second claimants are at liberty to withdraw their share after following due process of law.

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

To

1.The Motor Accidents Claims Tribunal,
Principal District Court, Perambalur.

2.The United India Insurance Company Limited,
Neyveli, Cuddalore District.

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



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R.HEMALATHA, J.

mtl

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