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CMA.No.1578 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.1578 of 2023

1. Saranya
 2. Minor.Inba Ragav
Rep. by next friend / Natural Guardian /
Mother Saranya
 3. Chitra
 4. R.Varma
 5. V.Prabakaran
- ... Appellants

VS.

1. T.Senthilkumar
 2. M/s.United India Insurance Co. Ltd.,
104 - A, Peramanur main road,
Peramanur, Salem.
- ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 01.04.2022 in M.C.O.P.263/2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.M.Lokesh



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For R2 : Mr.D.Venkatachalam

J U D G M E N T

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The appellants are the claimants in M.C.O.P.263/2018 on the file of the Motor Accident Claims Tribunal, Salem. They filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.1,00,00,000/- for the death of one Kumar (husband of claimant 1; father of claimant 2; son of claimant 3 and 4; brother of claimant 5) in a road accident that occurred on 12.11.2017.

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

On 12.11.2017, Kumar (deceased) was driving a car bearing Registration number TN-27-J-9493 on Mangalapuram - Rasipuram main road and at about 21.30 hours, when he was nearing Government Higher Secondary School, Rasipuram, a speeding lorry bearing Registration number TN-33-BJ-4434 hit the car, as a result of which, Kumar sustained injuries all over his body. He was immediately rushed to Nuro Foundation Hospital, Salem. However, he succumbed to injuries on 25.12.2017.



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3. According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration number TN-33-BJ-4434 was the cause of the accident and that since the said vehicle was insured with the second respondent, the United India 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 170 of the Motor Vehicles Act.

5. The Tribunal after analysing the evidence on record, fastened negligence on the part of the driver of the lorry bearing Registration number TN-33-BJ-4434 and awarded compensation of Rs.24,71,000/- 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 01.04.2022. The Tribunal also held that the liability of the owner of the lorry and the



insurer is joint and several.

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6. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellants / claimants have filed the present appeal under Section 173 of the Motor Vehicles Act.

7. Heard Mr.M.Lokesh, learned counsel appearing for the appellants and Mr.D.Venkatachalam, learned counsel for the second respondent.

8. Mr.M.Lokesh, learned counsel appearing for the appellants/claimants contended that Kumar (deceased), aged 29 years was working as a Project Manager in a private concern, earning a sum of Rs.25,000/- per month. However, the Tribunal had fixed his notional monthly income as Rs.12,000/- including future prospects. He, therefore prayed for enhancement of compensation.

9. Per contra, Mr.D.Venkatachalam, 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.

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10. According to the claimants, Kumar (deceased) aged 29 years, was working as a Project Manager in a private concern, earning a sum of Rs.25,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.12,000/- including future prospects. It is pertinent to point out that the accident took place in the year 2017 and in the facts and circumstances, this Court is of the opinion that fixing notional monthly income of the deceased as Rs.16,000/- 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**, 40% is added towards future prospects of the deceased. Since there are four dependents, 1/4th of the deceased's income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 17 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/-

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



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After 1/4 deduction = Rs.16,800/-

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= Rs.16,800/- x 12 x 17

= Rs.34,27,200/-

In addition to that the claimants are entitled to Rs.1,60,000/- (40,000/-x4), Rs.5,22,160/-, Rs.15,000/- and Rs.15,000/- towards loss of consortium, medical expenses, 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.41,39,360/- (34,27,200 + 5,22,160 + 1,60,000 + 15,000 + 15,000 = 41,39,360) as shown in the following tabular column:

S.No.	Head	Amount granted by this court
1.	Loss of dependency	Rs. 34,27,200 /-
2.	Medical bills	Rs.5,22,160/-
3.	Loss of consortium (Rs.40,000/- x 4)	Rs.1,60,000/-
4.	Funeral expenses	Rs.15,000/-
5.	Loss of Estate	Rs.15,000/-
Total		Rs.41,39,360/-

11. Thus, the compensation awarded by the Tribunal is enhanced to Rs.41,39,360/- that would carry interest at the rate of 7.5%



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per annum.

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12. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.41,39,360/-.
- 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 liability of the owner of the lorry and the second respondent (the United India Insurance Company Limited) is joint and several and the second respondent is directed to deposit the enhanced compensation amount i.e., Rs.41,39,360/- (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.263/2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.



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WEB COPY v. Apportionment :

claimant 1 / wife	Rs.11,39,360/- (with interest and costs)
claimant 2 / minor son	Rs.20,00,000/-
claimant 3 and 4 / Parents	Rs.5,00,000/- each

vi. The share of the minor appellant is directed to be deposited in any one of the Nationalised Bank till he attains majority. The claimants / appellants 1, 3 and 4 are at liberty to withdraw their respective shares after following due process of law.

vii. The appellants/claimants are not entitled to claim any interest for the period of delay of 229 days in filing this appeal.

28.10.2024

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

To

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

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



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R.HEMALATHA, J.

vum

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