**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 18.10.2024**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

**C.M.A.No.976 of 2024**

1. M.Shanmugam
2. S.Sakthivel - Minor
3. Bhavani - Minor ... Appellants

(Minor appellants 2 and 3 are rep. by their father & natural guardian Mr.M.Shanmugam)

vs.

1. S.Ganasekaran
2. The Manager,
   Reliance General Insurance Co. Ltd.,
   No.6, 4th Floor, Haddows Road,
   Nungambakkam, Chennai - 600 006. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 27.09.2023 in M.C.O.P.3803/2019 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellants : Mr.R.Dinesh Kumar

For R2 : Mr.P.Suresh Srinivasan

**JUDGMENT**

The appellants are the claimants in M.C.O.P.3803/2019 on the file of the Motor Accident Claims Tribunal, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, Rule 3 of M.A.C.T. Rules seeking compensation of Rs.40,00,000/- for the death of one Bakkiyalakshmi (wife of the first claimant and mother of the claimants 2 and 3) in a road accident that occurred on 27.04.2019.

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

On 27.04.2019, Bakkiyalakshmi (deceased) was walking along Pudupakkam road and at about 7.30 a.m., when she was nearing Standard fire godown, a speeding auto bearing Registration number TN-14-H-5816 came in the opposite direction and hit her, as a result of which, she sustained injuries all over her body. She was immediately rushed to Chettinadu hospital from where she was referred to Rajiv Gandhi Government General Hospital, Chennai. However, she succumbed to injuries on 28.04.2019.

**3.** According to the claimants, the rash and negligent driving of the driver of the auto bearing Registration number TN-14-H-5816 was the cause of the accident and that since the said vehicle was insured with the second respondent, the Reliance General 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 auto bearing Registration number TN-14-H-5816 and directed the second respondent, Insurance company to pay compensation of Rs.19,65,000/- 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 27.09.2023. The Tribunal also held that the liability of the owner of the auto and the insurer is joint and several.

**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.R.Dinesh Kumar, learned counsel appearing for the appellants and Mr.P.Suresh Srinivasan, learned counsel for the second respondent.

**8.** Mr.R.Dinesh Kumar, learned counsel appearing for the appellants/claimants contended that Bakkiyalakshmi (deceased), aged 40 years was a daily wager in a construction company, earning a sum of Rs.600/- per day. However, the Tribunal had fixed a meagre sum of Rs.12,000/- as her notional monthly income. He, therefore prayed for enhancement of compensation.

**9.** Per contra Mr.P.Suresh Srinivasan, 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.

**10.** According to the claimants, Bakkiyalakshmi (deceased) aged 40 years, was a labour in a construction company, earning a sum of Rs.600 per day. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.12,000/-. It is pertinent to point out that the accident took place in the year 2019 and in the facts and circumstances, this Court is of the opinion that fixing notional monthly income of the deceased as Rs.14,000/- 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,*** 25% is added towards future prospects of the deceased. Since there are three dependents, $1/3^{rd}$ of the deceased's income should be deducted towards her personal expenses. The proper multiplier to be adopted in the instant case is 15 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.14,000/-
after adding 25% Future Prospects = Rs.17,500/-
After 1/3 deduction = Rs.11,667/-

Loss of dependency:

= Rs.11,667/- x 12 x 15

= Rs.21,00,060/-

In addition to that the claimants are entitled to Rs.1,20,000/- (40,000/-x3), 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.22,50,060/- (21,00,060 + 1,20,000 + 15,000 + 15,000 = 22,50,060) as shown in the following tabular column:

| ***S.No.*** | ***Head*** | ***Amount granted by this court*** |
|---|---|---|
| 1. | Loss of dependency | Rs. 21,00,060 /- |
| 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.22,50,060/- |

**11.** Thus, the compensation awarded by the Tribunal is enhanced to Rs.22,50,060/- that would carry interest at the rate of 7.5% per annum.

**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.22,50,060/-.

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 auto and the second respondent (the Reliance General Insurance Company Limited) is joint and several and the second respondent is directed to deposit the enhanced compensation amount i.e., Rs.22,50,060/- (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.3803/2019 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

v. **Apportionment :**

| | |
|---|---|
| 1st claimant / husband | Rs.2,50,060/-<br>(with interest and costs) |
| 2nd claimant / minor son | Rs.10,00,000/- |

| | |
|---|---|
| 1st claimant / husband | Rs.2,50,060/-<br>(with interest and costs) |
| 3rd claimant / minor daughter | Rs.10,00,000/- |

vi. The share of the minor appellants 2 and 3 is directed to be deposited in any one of the Nationalised Bank till they attain majority. The first claimant is at liberty to withdraw his share after following due process of law.

**18.10.2024**

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

1.The Motor Accidents Claims Tribunal,
II Small Causes Court, Chennai.

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

**R.HEMALATHA, J.**

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