



WEB COPY



CMA.No.1894 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1894 of 2024

Senthilkumar (Died)

1. Nandhini
2. Manikandan
3. Aravindhan

... Appellants

vs.

1. K. Vadivel

2. M/s.National Insurance Company Limited,
Having Divisional Office at
Door No.19/B, S.R. Complex, Rajamani Thottam,
Bhavani Main Road, Sankari Taluk, Salem District,
Having Divisional Office at
No.1, TP Hub, 2nd Floor, LRN Building,
LRN Colony, Saradha College Main Road,
Salem.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 02.11.2021 in M.C.O.P. 24 of 2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.



WEB COPY



CMA.No.1894 of 2024

For Appellants : Mr.R.Navaneetha Krishnan
For R2 : Mr.J.Michael Visuvasam

J U D G M E N T

The appellants are the claimants in M.C.O.P. 24 of 2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.60,00,000/- for the death of one Uma @ Umarani (wife of claimant 1 (since deceased) and mother of claimants 2 to 4), in a road accident that took place on 03.07.2019.

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

On 03.07.2019, Uma @ Umarani (since deceased) was riding a two wheeler bearing Registration Number TN-90-B-5067 on Thirumagal Bypass Road and at about 6.55 hours, a speeding lorry bearing Registration Number TN-52-H-5384 belonging to the first respondent, hit the two wheeler driven by Uma @ Umarani (deceased), as a result of which, she sustained grievous injuries all over her body. She was immediately rushed to Government Hospital, Salem. However, she died on the way to hospital.



WEB COPY

3. According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration Number TN-52-H-5384 was the cause of the accident and that since the said vehicle was insured with the second respondent, the National 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 lorry 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, fastened negligence on the part of the driver of the lorry and further held that the owner of the lorry and the insurer are jointly and severally liable to pay compensation of Rs.21,50,680/- to the appellants / claimants 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 02.11.2021.



CMA.No.1894 of 2024

WEB COPY

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, 1988.

7. Heard Mr.R.Navaneetha Krishnan, learned counsel appearing for the appellants and Mr.J.Michael Visuvasam, learned counsel appearing for the second respondent.

8. Mr.R.Navaneetha Krishnan, learned counsel appearing for the appellants contended that the Tribunal did not add 40% of the income towards future prospects as per the decision of *the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601*. He therefore, prayed for enhancement of compensation.

9. Per contra Mr.J.Michael Visuvasam, learned counsel appearing for the second respondent drew the attention of this Court to the pay slip (Ex.P5) of the deceased and contended that a sum of Rs.3,015/- is



CMA.No.1894 of 2024

added towards conveyance and therefore, this amount should not be included while computing the monthly income of the deceased. He also contended that the salary particulars issued by Meenakshi India Garments Company Limited, Salem, has not been substantiated by adducing acceptable evidence and in the circumstances, fixing monthly income of the deceased as Rs.16,714/- is wrong.

10. A perusal of the salary slip (Ex.P5) shows that the monthly salary of the deceased is Rs.16,714/- and this includes conveyance amount of Rs.3,015/-. The conveyance amount varies from month to month and is not fixed. One Velmurugan (P.W.2) was examined to prove the contents of the salary slip (Ex.P5). However, he did not produce any relevant Records and Registers from Meenkashi India Garments Company Limited, Salem. The deceased was aged 37 years on the date of accident and the accident took place in the year 2019. Therefore, this Court is of the opinion that fixing notional monthly income of the deceased as 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**, 40% is added towards future



prospects of the deceased. Since there are three dependents, 1/4th of the deceased's income should be deducted towards her personal expenses. The deceased was aged 37 years on the date of accident and 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.15,000/-

40% Future Prospects = Rs.21,000/-

After 1/4 deduction = Rs.15,750/-

Loss of dependency

= Rs.15,750/- x 12 x 15

= Rs.28,35,000/-

In addition to that the claimants are entitled to Rs.1,60,000/- (40,000 x 4), 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



CMA.No.1894 of 2024

entitled to a total compensation of Rs.30,25,000/- (28,35,000 + 1,60,000 +15,000 + 15,000= 30,25,000) 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.28,35,000/-
2.	Loss of consortium (Rs.40,000/- x 4)	Rs.1,60,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.30,25,000/-

11. The compensation awarded by the Tribunal is enhanced to Rs.30,25,000/- which 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.30,25,000/-.



CMA.No.1894 of 2024

WEB COPY

iii. 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.

iv. The first respondent and the second respondent, the National Insurance Company Limited are directed to deposit the enhanced compensation amount i.e., Rs.30,25,000/- (less the amount already deposited) jointly and severally 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. 24 of 2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

v. Apportionment :

1st claimant / Daughter	Rs.15,25,000/- (with interest and costs)
2nd claimant / Son	Rs.7,50,000/-
3rd claimant / Son	Rs.7,50,000/-



CMA.No.1894 of 2024

WEB COPY

vi. The claimants are at liberty to withdraw their respective shares after following due process of law.

vii. The appellants/claimants are not entitled to claim interest for the period of delay of 575 days in filing this appeal.

12.09.2024

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

To

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

2. National Insurance Company Limited,
Having Divisional Office at
Door No.19/B, S.R. Complex, Rajamani Thottam,
Bhavani Main Road, Sankari Taluk, Salem District,
Having Divisional Office at
No.1, TP Hub, 2nd Floor, LRN Building,
LRN Colony, Saradha College Main Road,
Salem.

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



WEB COPY



CMA.No.1894 of 2024

R.HEMALATHA, J.
mtl

C.M.A.No.1894 of 2024

12.09.2024