



CMA.No.1860 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.1860 of 2024

1. Rajeshwari
2. Jayanthi
3. Chandrasekaran
4. Selvi
5. Murugan

... Appellants

vs.

1. K.Subramaniyan
 2. M/s. New India Assurance Co Limited,
Divisional office at TP Hub,
Sedhu Krishna Trade Centre,
No.133/31-A, Trichy Main Road,
Gugai, Salem.
- Respondents

...

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 10.10.2022 in M.C.O.P.1223/2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.R.Navaneetha Krishnan
For R2 : Mr.S.P Chokalingam

J U D G M E N T

The appellants are the claimants in M.C.O.P.1223/2020 on the file of the Motor Accident Claims Tribunal, Salem. They filed the claim



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petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.30,00,000/- for the death of their mother Athayee in a road accident which happened on 03.01.2020.

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

On 03.01.2020, Athayee (deceased) was travelling as a pillion rider in a two wheeler bearing Registration number TN-93-2271 on Dharmapuri - Salem main road. When she was nearing Thoppur Canteen bus stop, a speeding bus bearing Registration number K.A-01-AH-4693 belonging to the 1st respondent, hit the two wheeler as a result of which, Athayee fell down from the two wheeler and sustained injuries. She was immediately rushed to the Government Hospital, Salem. However, she succumbed to injuries on the same day.

3. According to the claimants, the rash and negligent driving of the driver of the bus Registration number K.A-01-AH-4693 was the cause of the accident and that since the said vehicle was insured with the second respondent, the New India Assurance 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 bus 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 driver of the bus and further held that the owner and the Insurer are jointly and severally liable to pay compensation of Rs.4,00,000/- 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 10.10.2022.

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.Navaneetha Krishnan, learned counsel for the appellants and Mr.S.P.Chokalingam, learned counsel appearing for the second respondent.



8. Mr.R.Navaneetha Krishnan, learned counsel appearing for

the appellants contended that the Tribunal did not award just compensation to the claimants and therefore prayed for enhancement of the same.

9. Per contra, Mr.S.P.Chokalingam, learned counsel appearing

for the second respondent, contended that the Award passed by the Tribunal is based on 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. A perusal of the records shows that the deceased was aged

75 years on the date of accident. According to the claimants, the deceased was an agricultural coolie, earning a sum of Rs.15,000/- p.m. In the absence of income proof, the Tribunal awarded a consolidated sum of Rs.4,00,000/- to the claimants. It is pertinent to point out that the accident took place in the year 2020 and in the facts and circumstances, this Court is of the opinion that fixing notional monthly income of the deceased as Rs.10,000/- would meet the ends of justice. Since there are grown up sons



and daughters, 1/2rd of the deceased's income is deducted towards her personal expenses. The proper multiplier to be adopted in the instant case is 5 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.10,000/-

After 1/2 deduction = Rs.5,000/-

Loss of dependency :

= Rs.5,000/- x 12 x 5

= Rs.3,00,000/-

In addition to that the claimants are entitled to Rs.2,00,000/- (40,000/-x5), 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.5,30,000/- (3,00,000 + 2,00,000 + 15,000 + 15,000 = 5,30,000) 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. 3,00,000 /-



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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 5)	Rs.2,00,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.5,30,000/-

11. Thus, the compensation awarded by the Tribunal is enhanced to Rs.5,30,000/- from Rs.4,00,000/- which would carry interest at the rate of 7.5% per annum.

12. In the result,

- The Civil Miscellaneous Appeal is partly allowed. No costs.
- The compensation awarded by the Tribunal is enhanced to Rs.5,30,000/-.
- 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.
- The liability of the first respondent (owner) and the second respondent (the New India Assurance Company Limited) is joint and several and the second respondent / New India Assurance



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Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.5,30,000/- (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 / uploading of this order to the credit of M.C.O.P.1223/2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

- v. On such deposit being made, the claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.
- vi. The appellants/claimants are not entitled to claim any interest for the period of delay of 415 days in filing this appeal.

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

R.HEMALATHA, J.



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To

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- 1.The Motor Accident Claims Tribunal
Special District Court, Salem.
- 2.The Section Officer, VR Section,
Madras High Court, Chennai.

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