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CMA.No.1504 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1504 of 2023

1. Kolanjiammal
2. Minor Malathika
3. Minor Karthikadevi

.... Appellants

Minors 2 & 3 represented by their Mother/Natural Guardian
Kolanjiammal.

vs.

1. Nalan
2. The Manager
IFFCO TOKIO General Insurance Company Limited
No.19/1, Puthur High Road
Ramalinga Nagar, Woraiyur,
Trichy 620 017

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 06.02.2023 in M.C.O.P.102/2021 on the file of the Motor Accident Claims Tribunal, Principal District and Sessions Court, Ariyalur.

For Appellants : Mr. P. Parthi Kannan

R1 : No appearance

For R2 : Mr. J. Michael Visuvasam



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JUDGMENT

The appellants are the claimants in M.C.O.P.102/2021 on the file of the Motor Accident Claims Tribunal, Ariyalur. They filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.75,00,000/- for the death of one Manikandan (husband of the first claimant and father of claimants 2 and 3) in a road accident that occurred on 04.08.2021.

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

2.1. On 04.08.2021 Manikandan (since deceased) was riding his Bajaj CD 100 two wheeler bearing Registration number TN-61-T-7615 on Sirukalathur-Periyakurichi Road. When he was nearing Sirukalathur, a speeding Hero Honda Splendor Plus motorcycle bearing Registration Number TN-61-B-1091, belonging to the first respondent, came in the opposite direction and hit the two wheeler driven by Manikandan as a result of which he fell down and sustained injuries all



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over his body. He was immediately rushed to the Government Hospital, Ariyalur and was subsequently referred to Thanjavur Government Medical College Hospital. However, he succumbed to injuries on 05.08.2021.

3. According to the claimants, the rash and negligent driving of the driver of the Hero Honda Splendor Plus motorcycle bearing Registration Number TN-61-B-1091, was the cause of the accident and that since the said motorcycle was insured with the second respondent, the IFFCO TOKIO General Insurance Company Limited, Trichy, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the owner of the offending motorcycle remained absent and was set *ex parte*. 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 rider of the motorcycle bearing Registration



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Number TN-61-B-1091 and the deceased in the ratio 85:15, and directed

the second respondent, insurer of the said motorcycle, to pay compensation of Rs.12,79,250/- (85% on the total compensation of Rs.15,05,000/-) to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The Tribunal also held that the liability of the Insurance Company and the owner of the motorcycle is joint and several.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mr. P. Parthi Kannan, learned counsel appearing for the appellants and Mr. J. Michael Visuvasam, learned counsel appearing for the second respondent Insurance Company.

8. Mr. P. Parthi Kannan, learned counsel appearing for the appellants contended that the Tribunal has not awarded just compensation and also fastened contributory negligence on the part of the



deceased to an extent of 15% even though it had come to a conclusion that the rider of the two wheeler bearing Registration Number TN-61-B-1091 was responsible for the accident. He therefore prayed for enhancement of compensation and to set aside the contributory negligence of 15% fixed by the Tribunal on the part of the deceased.

9. Per contra, Mr. J. Michael Visuvasam, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal, after properly appreciating the evidence on record, had fastened contributory negligence on the part of the deceased to an extent of 15% and awarded just compensation and therefore, the same need not be disturbed in the present appeal.

Negligence

10. A perusal of the records shows that the accident took place on Sirukalathur-Periyakurichi Road and there was a head on collision. Though the manner of accident shows that the vehicle bearing Registration Number TN-61-B-1091 was responsible for the accident, the deceased was also rash and negligent in riding his two wheeler. He did not also



possess a valid driving license. In the circumstances, the negligence on the part of the offending vehicle and the deceased is fixed in the ratio 90:10.

Quantum

10.1. According to the claimants, the deceased was a Construction worker earning a sum of Rs.30,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.7,500/-. Considering the year of accident and the age of the deceased, this Court fixes the notional monthly income of the deceased as Rs.17,000/-. 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 the deceased had three dependents, 1/3 is 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.17,000/-



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40% Future Prospects = Rs.23,800/-

After 1/3 deduction = Rs.15,866/-

Loss of dependency

= Rs.15,866/- x 12 x 17

= Rs.32,36,664/-

In addition to that the claimants are entitled to Rs.1,32,000/- (44,000 x 3), Rs.16,500/- and Rs.16,500/- 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).

10.2. The enhanced amount under the different heads are detailed hereunder:

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	32,36,664/-
2.	Loss of consortium (Rs.44,000/- x 3)	1,32,000/-
3.	Funeral expenses	16,500/-
4.	Loss of Estate	16,500/-
	Total	34,01,664/-
	Less: 10% contributory negligence	3,40,166/-
		30,61,498/-

This amount shall carry interest at the rate of 7.5% per annum from the



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date of claim petition till the date of deposit.

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11. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.30,61,498/-.
- 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 second respondent, the IFFCO TOKIO General Insurance Company Limited, Trichy, is directed to deposit the enhanced compensation amount of Rs.30,61,498 /- (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 to the credit of M.C.O.P.102/2021 on the file of the Motor Accident Claims Tribunal, Principal District and Sessions Court, Ariyalur, within a



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period of four weeks from the date of receipt of a copy of this order/uploading of this order.

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- v. The enhanced compensation amount of Rs.30,61,498/- is apportioned to the claimants as follows:

Kolanjiammal (first claimant)	Rs.4,61,498/- with costs and interest
Minor Malathika (second claimant)	Rs.13,00,000/-
Minor Karthikadevi (third claimant)	Rs.13,00,000/-

- vi. On such deposit being made, the first claimant is at liberty to withdraw the same as per the apportionment made by this Court after filing proper petition for withdrawal. Since the claimants 2 and 3 are minors, their share may be deposited in anyone of the nationalised banks until they attain majority.

01.10.2024

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

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To

1. Motor Accident Claims Tribunal,
Principal District and Sessions Court, Ariyalur.
2. The Manager
IFFCO TOKIO General Insurance Company Limited
No.19/1, Puthur High Road
Ramalinga Nagar, Woraiyur,
Trichy 620 017
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

bga

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