



CMA.No.1307 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1307 of 2023

- 1.Vasantha
2. Minor. Nanthini
3. Minor Barani
4. Minor. Iyappan
5. Alamelu

... Appellants

vs.

1. Senthilkumar
2. The Manager,
United India Insurance Company Limited,
T.B. HUB Divisional Office,
No.4, Promenade Road,
First Floor, Trichy 620 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 08.11.2021 in M.C.O.P.No.94 of 2019 on the file of the Motor Accidents Claims Tribunal, Mahila Court, Perambalur.

For Appellants : Mr. M. Lokesh
R1 : Notice dispensed with.
For R2 : Mrs. R. Rathna Thara



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J U D G M E N T

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The appellants are the claimants in M.C.O.P.No.94 of 2019 on the file of the Sessions Judge, Motor Accident Claims Tribunal, Perambalur. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.50,00,000/- for the death of one Karnan (husband of the first claimant, father of the claimants 2 to 4 and son of the claimant 5) in a road accident that took place on 08.01.2019.

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

2.1. On 08.01.2019 Karnan (deceased) was travelling in his Hero Passion Pro two wheeler bearing Registration Number TN-46-S-6924 on Sengunam-Chennai National highways. When he was nearing Sirugudal village, a speeding lorry bearing Registration Number TN-46-U-5837, belonging to the first respondent, hit his two wheeler causing his instantaneous death.

3. According to the claimants, the rash and negligent driving of



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the driver of the lorry bearing Registration Number TN-46-U-5837, was the cause of the accident and that since the said vehicle was insured with the second respondent, 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 first respondent 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 fixed 10% contributory negligence on the part of the deceased and directed the second respondent to pay compensation of 15,14,520/- to the appellants/claimants together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation. The Tribunal also held that the liability of the respondents are joint and several.

6. Aggrieved over the quantum of compensation awarded by the



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Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mr. M. Lokesh, learned counsel appearing for the appellants and Mrs. R. Rathna Thara, learned counsel for the second respondent.

8. Mr. M.Lokesh, learned counsel appearing for the appellants contended that Karnan (deceased) was doing business of buying and selling of pork meat earning a sum of Rs.30,000/- per month. However, the Tribunal had fixed the notional monthly income of the deceased only as Rs.8,000/-. He therefore, prayed for enhancement of the monthly income of the deceased.

9. Per contra, Mrs. R. Rathna Thara, learned counsel appearing for the second respondent/Insurance Company contended that the Award passed by the Tribunal is based on the well laid down principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed.



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10. It is seen from the records that the deceased was in the business of buying and selling pork meat and the accident took place in the year 2019. In the circumstances, this Court is of the view that fixing the notional income at Rs.15,000/- per month 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 the deceased had five dependents, 1/4 should be deducted towards his personal expenses. The deceased was aged 34 years on the date of the accident and the proper multiplier to be adopted in the instant case is 16 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



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= Rs.15,000/- x 12 x 16

= Rs.30,24,000/-

In addition to that the claimants are entitled to Rs.2,00,000/- (40,000 x 5), 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).

10.1. The Tribunal fixed the negligence on the part of the deceased to the extent of 10% as he was not having a valid driving license. When the Tribunal had come to the conclusion that the driver of the lorry bearing Registration Number TN-46-U-5837 was rash and negligent in driving his vehicle, the Tribunal was wrong in fixing contributory negligence on the part of the deceased and that too on the basis that he was not possessing a valid driving license. In the circumstances, the contributory negligence fixed on the part of the deceased is hereby set aside.

10.2 The enhanced amount under the different heads are



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detailed hereunder:

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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	30,24,000/-
2.	Loss of consortium (Rs.40,000/- x 5)	2,00,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	32,54,000/-

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The orders passed by the Tribunal fixing contributory negligence on the part of the deceased to the extent of 10% is set aside.
- iii. The compensation awarded by the Tribunal is enhanced from Rs.15,14,520/- to Rs.32,54,000/-.



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- iv. 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.
- v. The second respondent, United India Insurance Company Limited, Trichy, is directed to deposit the enhanced compensation amount i.e., Rs.32,54,000/- (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 to the credit of MCOP.No.94 of 2019 on the file of the Sessions Judge, Mahila Court, Motor Accident Claims Tribunal, Perambalur, within a period of four weeks from the date of receipt of a copy of this order. The ratio of apportionment made by the Tribunal shall be kept intact.
- vi. On such deposit being made, the appellants 1 and 5 are at liberty to withdraw their share as per the apportionment made by the Tribunal after filing a proper petition for withdrawal. Since the



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appellants 2 to 4 are minors, their shares, as per the apportionment made by the Tribunal, shall be deposited in a fixed deposit in any one of the Nationalised banks until they attain majority.

27.08.2024

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

To

1. Sessions Judge, Mahila Court, Motor Accident Claims Tribunal, Perambalur.
2. The Manager,
United India Insurance Company Limited,
T.B. HUB Divisional Office,
No.4, Promenade Road,
First Floor, Trichy 620 001.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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