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CMA.No.2180 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.2180 of 2024

1. Rathika @ Radhika

2. Minor Vishal

3. Minor Naveen

Minors are Rep. by Natural Guardian, Mother
Rathika @ Radhika, 1st appellant

4. Ayyammal

5. Elumalai

... Appellants

vs.

1. K.Murugan

2. M/s.Oriental Insurance Company Limited,
Having Divisional Office,
@ Siva Complex, II Floor,
No.22C, Saradha College Main Road,
Salem - 636 016.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 05.07.2022 in M.C.O.P.670/2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.S.Nirmal Aditya

For R2 : Mr.M.Krishnamoorthy



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J U D G M E N T

The appellants are the claimants in M.C.O.P.670/2021 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.40,00,000/- for the death of one Vengatachalam @ Venkatachalam (husband of the 1st claimant, father of the 2nd and 3rd claimants and son of the 4th and 5th claimants) in a road accident which happened on 13.03.2021.

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

On 13.03.2021 Vengatachalam @ Venkatachalam (deceased) was returning back home after completing his work in his two wheeler bearing Registration number TN 30 BV 3863 on Bommidi - Deevattipatti main road. When he was parking his vehicle in his house at Bethol, a two wheeler bearing Registration number TN 30 CY 4399, belonging to the first respondent came with a high speed and hit the two wheeler of Vengatachalam @ Venkatachalam, as a result of which, he sustained injuries all over his body. He was immediately rushed to Government Hospital, Omalur from where he was referred to Government Hospital, Salem . However he succumbed to injuries on the next day.



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3. According to the claimants, the rash and negligent driving of the driver of the two wheeler bearing Registration number TN 30 CY 4399 was the cause of the accident and that since the said vehicle was insured with the second respondent, the Oriental Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to him.

4. In the Tribunal, the owner of the vehicle remained absent and was set *exparte*. 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 two wheeler bearing Registration number TN 30 CY 4399 and on the deceased Vengatachalam @ Venkatachalam in the ratio 70:30. Since the rider of the two wheeler bearing Registration number TN 30 CY 4399 did not have a valid driving license, the Tribunal directed the second respondent, Insurance company



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to pay compensation of Rs.11,73,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, in the first instance and then recover the same from the owner of the vehicle, vide, its orders dated 05.07.2022.

6. Aggrieved over the quantum of compensation awarded by the Tribunal and challenging 30% contributory negligence fastened on the part of the deceased, the appellants / claimants have filed the present appeal under Section 173 of the Motor Vehicles Act.

7. Heard Mr.S.Nirmal Aditya, learned counsel appearing for the appellants and Mr.M.Krishnamoorthy, learned counsel for the second respondent.

8. Mr.S.Nirmal Aditya, learned counsel appearing for the appellants contended that Vengatachalam @ Venkatachalam (deceased) was actually parking his two wheeler in front of his house and the two wheeler bearing Registration number TN 30 CY 4399 hit him from behind, as a result of which, Vengatachalam @ Venkatachalam sustained injuries and subsequently died in the hospital. However, the Tribunal



fastened 30% contributory negligence on the part of the deceased without any basis. He also contended that the deceased was working as a Mason, earning a sum of Rs.25,000/- p.m. The Tribunal, however, fixed a meagre sum of Rs.10,000/-p.m., including future prospects. He therefore, prayed for enhancing compensation awarded by the Tribunal.

9. Per contra, Mr.M.Krishnamoorthy, 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. He also contended that the Tribunal after properly analysing the evidence on record, had rightly fastened contributory negligence to the extent of 30% on the part of the deceased.

10. The first claimant Rathika @ Radhika, wife of Vengatachalam @ Venkatachalam (deceased) examined herself as P.W.1. She deposed that when her husband Vengatachalam @ Venkatachalam came back from work at about 6.30 p.m., on 13.03.2021 in a two wheeler



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bearing Registration number TN 30 BV 3863. When he was about to park his vehicle, a two wheeler bearing Registration number TN 30 CY 4399 hit his vehicle, as a result of which, he sustained injuries and subsequently died in the hospital. She is the eyewitness to the occurrence. There is nothing on record to discredit or disbelieve her version. However, the Tribunal had fastened 30% contributory negligence on the part of the deceased without considering the evidence of P.W.1. Moreover, an FIR (Ex.P1) was registered against the rider of the two wheeler bearing Registration number TN 30 CY 4399. In the circumstances, 30% contributory negligence fastened on the part of the deceased Vengatachalam @ Venkatachalam is liable to be set aside.

12. In the claim petition, it is contended that the deceased was a Mason, aged about 32 years, earning a sum of Rs.25,000/- per month. The Tribunal fixed the notional monthly income of the deceased as Rs.10,000/- including future prospects. It is pertinent to point out that the accident took place in the year 2021 and in the facts and circumstances, this court is of the opinion that fixing notional monthly income of the deceased at Rs.16,000/- 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 five dependents, 1/4rd of the deceased's income should be deducted towards his personal expenses. 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.16,000/-

after adding 40% Future Prospects = Rs.22,400/-

After 1/4 deduction = Rs.16,800/-

Loss of dependency :

= Rs.16,800/- x 12 x 16

= Rs.32,25,600/-

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.34,55,600 (32,25,600 + 2,00,000 + 15,000 + 15,000 = 34,55,600) 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.32,25,600/-
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.34,55,600/-

13. Thus, the compensation awarded by the Tribunal is enhanced to Rs.34,55,600/- which would carry interest at the rate of 7.5% per annum.

14. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.11,73,000/- to Rs.34,55,600/-.
- iii. 30% of the contributory negligence fastened on the part of the deceased Vengatachalam @ Venkatachalam is set aside.
- iv. The appellants / claimants are directed to pay court fee for the



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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 / Oriental Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.34,55,600/- (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 realisation in the first instance, 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.670/2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem and then recover the same from the owner of the vehicle under the same cause of action.

- vi. On such deposit being made, the claimants are at liberty to withdraw their respective shares as shown below after following due process of law:

1st appellant / 1st wife = Rs.4,55,600/-
(with interest and costs)

2nd and 3rd Appellants(Minor sons) = Rs.10,00,000/- each

4th and 5th Appellants / parents = Rs.5,00,000/- each



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vii.The share of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalised Bank till they attain majority.

viii.The appellants/claimants are not entitled to claim any interest for the period of delay of 559 days in filing this appeal.

30.08.2024

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

To

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



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R.HEMALATHA, J.

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