IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.1397 of 2024

1. A.Murali
2. A.Abiraman ... Appellants

vs.

1. S.Rajendiran
2. O.N.Gugan Babu
3. M/s.Sri Ram General Insurance Co. Ltd.,
   Branch Office,VCTV Main Road,
   Sathy Road, Erode Taluk. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 24.01.2024 in M.C.O.P.90/2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

For Appellants : Mr.R.P.Ruban Chakravarthy
For R3 : Mrs.R.Sreevidhya

JUDGMENT

The appellants are the claimants in M.C.O.P.90/2018 on the file of the Motor Accident Claims Tribunal, Erode. 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 their father Ariyakumar @ Kumar in a road accident which happened on 17.08.2013.

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

On 17.08.2013, Ariyakumar @ Kumar (deceased) was doing repair work of right rear wheel of Omni Tourist bus bearing Registration number TN 28 AE 8799. The driver of the bus without noticing the same, moved the bus in a reckless manner, as a result of which, the right rear wheel of the bus ran over Ariyakumar @ Kumar, resulting in his instantaneous death.

3. According to the claimants, the rash and negligent driving of the driver of the bus Registration number TN 28 AE 8799 was the cause of the accident and that since the said vehicle was insured with the third respondent, the Sri Ram General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal, the driver and the owner of the bus remained absent and was set *exparte*. The third 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 vehicle. It was further held that the liability of the owner and the Insurer is joint and several and that they should pay compensation of Rs.10,14,100/- 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 24.01.2024.

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.P.Ruban Chakravarthy, learned counsel for the appellants and Mrs.R.Sreevidhya, learned counsel for the second respondent.

8. Mr.R.P.Ruban Chakravarthy, learned counsel appearing for the appellants contended that the deceased, was working as a cleaner cum mechanic, earning a sum of Rs.20,000/- per month. However, the Tribunal had fixed a meagre amount of Rs.6,000/- as his monthly notional income. He therefore prayed for enhancing the notional income of the deceased.

9. Per contra Mrs.R.Sreevidhya, 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 45 years on the date of accident. According to the claimants, the deceased was working as a Cleaner cum Mechanic. In the absence of satisfactory income proof, the Tribunal has fixed the notional monthly income of the deceased as Rs.6,000/- per month. It is pertinent to point out that the accident took place in the year 2013 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. 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,*** 25% is added towards future prospects of the deceased. Since there are two dependents, $1/3^{rd}$ of the deceased's income is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 13 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 adding 25% Future Prospects = Rs.12,500/-

After 1/3 deduction = Rs.8,333/-

Loss of dependency :

= Rs.8,333/- x 12 x 13

= Rs.12,99,948/-

In addition to that the claimants are entitled to Rs.80,000/- (40,000/-x2), 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.14,09,948/- (12,99,948 + 80,000 + 15,000 + 15,000 = 14,09,948) as shown in the following tabular column:

S.No.	***Head***	***Amount granted by this court***
1.	Loss of dependency	Rs. 12,99,948 /-
2.	Loss of consortium (Rs.40,000/- x 2)	Rs.80,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.14,09,948/-

11. Thus, the compensation awarded by the Tribunal is enhanced to Rs.14,09,948/- 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 from Rs.10,14,100/- to Rs.14,09,948/-.

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 liability of the second respondent (owner) and the third respondent (the Sri Ram General Insurance Company Limited) is joint and several and the third respondent / Sri Ram General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.14,09,948/- (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.90/2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

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.

12.09.2024

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

R.HEMALATHA, J.

vum

To

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

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

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