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CMA.No.1166 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.1166 of 2024

1. Nallammal
2. Palanisamy
3. Nanthini
4. Ramya

... Appellants

vs.

1. S.Dhanasekar
2. M/s.New India Assurance Co. Ltd.,
Having Divisional Office at T.P. Hub,
No.252/42, 1st Floor, N.M.Arcad, Opp. ARRS,
Multiplex, Meyyanoor Byepass road,
Salem.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 02.02.2024 in M.C.O.P.843/2023 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

For Appellants : Mr.Navaneetha Krishnan

For R2 : Mr.J.Chandran



CMA.No.1166 of 2024

J U D G M E N T

The appellants are the claimants in M.C.O.P.843/2023 on the file of the Motor Accident Claims Tribunal, 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 Kamalraj, (son of the claimants 1 and 2 and brother of the claimants 3 and 4) in a road accident which happened on 19.02.2023.

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

On 19.02.2023, Kamalraj (deceased) was riding a two-wheeler bearing Registration number TN-73-F-8872 on Ranipet-Arcot main road. When he was nearing Palar old bridge, an Auto bearing Registration number TN-73-AC-3837, hit the two wheeler, as a result of which, Kamalraj (deceased) sustained injuries all over his body and died on the way to hospital.

3. According to the claimants, the rash and negligent driving of the driver of the Auto bearing registration number TN-73-AC-3837 was the cause of the accident and that since the said Auto was insured with the



CMA.No.1166 of 2024

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 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 Auto and directed the second respondent, the New India Assurance Company Limited to pay compensation of Rs.11,85,000/- 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 02.02.2024. The Tribunal also held that the liability of the owner of the Auto and the insurer are joint and several.

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.Navaneetha Krishnan, learned counsel appearing



CMA.No.1166 of 2024

for the appellants and Mr.J.Chandran, learned counsel for the second respondent.

8. Mr.Navaneetha Krishnan, learned counsel appearing for the appellants contended that the deceased, aged 24 years, was a JCB driver, earning a sum of Rs.30,000/- per month. However, the Tribunal had fixed a very meagre sum of Rs.10,000/- including future prospects, as his monthly notional income. He, therefore prayed for enhancing the notional monthly income of the deceased.

9. Per contra Mr.J.Chandran, 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. According to the claimants, the deceased in the instant case is 24 years, was a JCB driver, earning a sum of Rs.30,000/- per month. In the absence of income proof, 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 2023 and the deceased was aged 24 years. In the facts and circumstances, this Court is of the opinion that fixing notional monthly income of the deceased at Rs.17,000/- 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. The deceased died as a bachelor and hence, 50% is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 18 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/-

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

After 1/2 deduction = Rs.11,900/-

Loss of dependency :

= Rs.11,900/- x 12 x 18

= Rs.25,70,400/-

In addition to that the claimants are entitled to Rs.1,76,000/- (44,000/-x



CMA.No.1166 of 2024

4), 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). Thus, the claimants are entitled to a total compensation of Rs.27,79,400/- (25,70,400 + 1,76,000 + 16,500 + 16,500 = 27,79,400) 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.25,70,400 /-
2.	Loss of consortium (Rs.44,000/- x 4)	Rs.1,76,000/-
3.	Funeral expenses	Rs.16,500/-
4.	Loss of Estate	Rs.16,500/-
Total		Rs.27,79,400/-

11. The compensation awarded by the Tribunal is enhanced from Rs.11,85,000/- to Rs.27,79,400/- which would carry interest at the rate of 7.5% per annum.

12. In the result,



CMA.No.1166 of 2024

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.11,85,000/- to Rs.27,79,400/-.
- 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 first respondent (owner) and the second respondent (the New India Assurance Company Limited) is joint and several and the second respondent is directed to deposit the enhanced compensation amount i.e., Rs.27,79,400/- jointly and severally (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 to the credit of M.C.O.P.843/2023 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.
- v. On such deposit being made, the claimants are at liberty to



CMA.No.1166 of 2024

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.

05.09.2024

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

To

- 1.The Motor Accidents Claims Tribunal,
Special District Judge, Salem
2. M/s.New India Assurance Co. Ltd.,
Having Divisional Office at T.P. Hub,
No.252/42, 1st Floor, N.M.Arcad, Opp. ARRS,
Multiplex, Meyyanoor Bypass road,
Salem.
- 3.The Section Officer, VR Section,
Madras High Court, Chennai.

R.HEMALATHA, J.



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CMA.No.1166 of 2024

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C.M.A.No.1166 of 2024

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