



WEB COPY



CMA.No.2077 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2077 of 2024

1.Deepa

2.Minor. Kamalnath

3.Minor. Jayasurya

... Appellants

(Appellants 2 and 3 are represented
by their guardian/mother Deepa, 1st appellant)

vs.

1.K.Palaniswamy

2.M/s.Raheja QBE General Insurance Company Limited,
Windsor House,
5th Floor, CST Road,
Kalina, Santacruz (East),
Mumbai - 400 098.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 07.02.2022 in M.C.O.P.No.1522 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.



CMA.No.2077 of 2024

For Appellants : Mr.S.Nirmal Aditya

For R2 : Mr.S.Arunkumar

WEB COPY

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.1522 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem. 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 Suresh, (the husband of the first claimant, father of the claimants 2 and 3) in a road accident that took place on 05.04.2019.

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

On 05.04.2019 Suresh (deceased) was riding his two wheeler bearing Registration Number TN-29-BZ-5699 on Elampillai - Kakkapalayam Main Road. When he was nearing Boys Higher Secondary School, Perumagoundampatty at about 20.15 hours an Auto bearing Registration Number TN-47-S-6215 belonging to the first respondent and insured with the second respondent hit the two wheeler, as a result of which, Suresh fell down and sustained grievous injuries. He was immediately rushed to the VIMS Hospital, Salem from where he was referred to the Government Hospital, Salem. However, he died on the way



CMA.No.2077 of 2024

to the hospital.

WEB COPY

3. According to the claimants, the rash and negligent driving of the driver of the Auto bearing Registration Number TN-47-S-6215 was the cause of the accident and that since the said vehicle was insured with the second respondent, the Raheja QBE General Insurance Company Limited, the owner and the insurer of the Auto are jointly and severally liable to pay compensation.

4. The first respondent remained absent and was set *ex parte* in the Tribunal. 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, awarded a compensation of Rs.11,23,000/- 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 07.02.2022.



CMA.No.2077 of 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, seeking enhancement of compensation amount.

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

8. Mr.S.Nirmal Aditya, learned counsel appearing for the appellants contended that the deceased was aged 46 years on the date of the accident and was earning a sum of Rs.20,000/- per month as a Security in a Private Spinning Mill. He also contended that the deceased was the sole bread winner of the family and the award passed by the Tribunal is too meagre and hence, prayed for enhancement of compensation.

9. Per contra Mr.S.Arunkumar, learned counsel appearing for



CMA.No.2077 of 2024

the second respondent, the Raheja QBE General Insurance Company Limited contended that the Award passed by the Tribunal is based on the 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. The deceased Suresh was a Security in a Private Spinning Mill. In the absence of income proof, the Tribunal fixed the monthly income of the deceased as Rs.12,000/-. It is pertinent to point out that the accident took place in the year 2019 and in the facts and circumstances, this Court is of the opinion that fixing the notional monthly income of the deceased at Rs.15,000/- 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% should be added towards future prospects of the deceased. Since there are three dependents, 1/3rd of the deceased's income should be 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 :



WEB COPY



CMA.No.2077 of 2024

Notional Income = Rs.15,000/-

25% Future Prospects = Rs.3,750/-

Total = Rs.15,000/- + Rs.3,750/- = Rs.18,750/-

After 1/3 deduction = Rs.12,500/-

Loss of dependency :

= Rs.12,500/- x 12 x 13

= Rs.19,50,000/-

In addition to that the claimants are entitled to Rs.40,000/-, 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). Thus, the claimants are entitled to a total compensation of Rs.21,00,000/- (19,50,000 + 1,20,000 + 15000 + 15000= 21,00,000) which is extracted here under.

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs.19,50,000/-
2.	Loss of consortium (Rs.40,000/- x 3)	Rs.1,20,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.21,00,000/-



CMA.No.2077 of 2024

11. Thus, the compensation awarded by the Tribunal is enhanced from Rs.11,23,000/- to Rs.21,00,000/- 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.11,23,000/- to Rs.21,00,000/-.
- 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 Raheja QBE General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.21,00,000/- (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 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.No.1522 of 2019 on the file of the Motor Accident Claims



CMA.No.2077 of 2024

Tribunal, Special District Judge, Salem.

WEB COPY

v. On such deposit being made, the appellants / 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. However, it is made clear that the appellants are not entitled for interest for the period of delay in filing this appeal on the amount enhanced by this Court.

07.08.2024

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

To

1.The Motor Accidents Claims Tribunal,
Special District Judge, Salem.

2.M/s.Raheja QBE General Insurance Company Limited,
Windsor House,
5th Floor, CST Road,
Kalina, Santacruz (East),

8/10



CMA.No.2077 of 2024

Mumbai - 400 098.

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

R.HEMALATHA, J.
mtl



WEB COPY



CMA.No.2077 of 2024

C.M.A.No.2077 of 2024

07.08.2024
(1/3)