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CMA.No.1301 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1301 of 2024

1.Sindhu

2.Minor. Sharvesh

3.Minor. Prithisha

(2 and 3 minor appellants are represented
by their mother and natural guardian Sindhu)

4.Navaneedham

5.Ragavel

... Appellants

vs.

1.N.Moorthy

2.The Shri Ram General Insurance Company Limited,
Motor III Party Claims Office,
No.4, Lady Desika Road, Mookambika Complex,
Mylapore, Chennai - 4.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 07.08.2023 in M.C.O.P.936 of 2021 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.



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For Appellants : Ms.G.Anitha
for Mr.K.Sivakumar
For R2 : Ms.R.Sreevidhya

J U D G M E N T

The appellants are the claimants in M.C.O.P.936 of 2021 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.49,00,000/- for the death of one Karthik, (husband of the first claimant, father of claimants 2 and 3 and son of claimants 4 and 5) in a road accident that took place on 25.05.2018.

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

On 25.05.2018, Karthik (since deceased) was driving a Tata Ace vehicle bearing Registration Number TN-73-C-7107 on Banavaram – Sholinghur Road. When he was nearing Ramapuram bus stop, a paddy harvesting machine bearing Registration Number TN-25-W-3030 hit the Tata Ace vehicle driven by Karthik (deceased), as a result of which, he



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sustained injuries all over his body. He was immediately rushed to the Hospital. However, he succumbed to injuries on the same day.

3. According to the claimants, the rash and negligent driving of the driver of the paddy harvesting machine bearing Registration Number TN-25-W-3030 was the cause of the accident and that since the said vehicle was insured with the second respondent, the Shri Ram General Insurance Company Limited, the owner of the vehicle and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the owner of the vehicle (paddy harvesting machine) remained absent and was set *ex parte*. The second respondent, the Shri Ram General Insurance Company Limited 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 vehicle (paddy harvesting machine) and awarded compensation of Rs.26,11,400/- to the appellants /



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claimants 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 07.08.2023.

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, 1988.

7. Heard Ms.G.Anitha, learned counsel appearing for the appellants and Ms.R.Sreevidhya, learned counsel appearing for the second respondent.

8. Ms.G.Anitha, learned counsel appearing for the appellants would contend that the deceased was a driver by profession earning a sum of Rs.30,000/- per month. However, the Tribunal fixed the notional monthly income of the deceased as Rs.10,500/-, which, according to her, is very meagre. She therefore, prayed for enhancement of the notional income of the deceased.



9. Per contra Ms.R.Sreevidhya, learned counsel appearing for

the second respondent 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 at this stage.

10. In the claim petition, it is contended that the deceased was aged about 24 years and was a driver by profession 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.10,500/-. Considering the age of the victim and the year of the accident, this Court is of the opinion that fixing 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**, 40% is added towards future prospects of the deceased. Since there are five dependents, 1/4th of the deceased's income should be deducted towards his personal expenses. The deceased was aged 24 years on the date of accident and the proper multiplier to be adopted in the instant case is 18 as per the decision



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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/-

Loss of dependency

= Rs.21,000/- x 12 x 18 x 3/4

= Rs.34,02,000/-

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). Thus, the claimants are entitled to a total compensation of Rs.36,32,000/- (34,02,000 + 2,00,000 + 15,000 + 15,000= 36,32,000) 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.34,02,000/-
2.	Loss of consortium (Rs.40,000/- x 5)	Rs.2,00,000/-
3.	Funeral expenses	Rs.15,000/-



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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
4.	Loss of Estate	Rs.15,000/-
Total		Rs.36,32,000/-

11. Thus, the compensation awarded by the Tribunal is enhanced from Rs.26,11,400/- to Rs.36,32,000/- 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.26,11,400/- to Rs.36,32,000/-.
- 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 Shri Ram General Insurance Company Limited, is directed to deposit the enhanced compensation amount i.e., Rs.36,32,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim



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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.936 of 2021 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

v. Apportionment :

1st claimant / Wife	Rs.10,32,000/- (with interest and costs)
2nd claimant / Son (Minor)	Rs.10,00,000/-
3rd claimant / Daughter (Minor)	Rs.12,00,000/-
4th claimant / Mother	Rs.3,00,000/-
5th claimant / Father	Rs.1,00,000/-

vi. The compensation amount of the minor claimants 2 and 3 shall be deposited in any one of the Nationalised Bank till they attain majority. The claimants 1, 4 and 5 are at liberty to withdraw their respective shares after following due process of law.

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Index : Yes/No
Speaking/Non-speaking order



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To

- 1.The Motor Accidents Claims Tribunal,
Special Sub Court No.II, Small Causes Court, Chennai.
- 2.The Shri Ram General Insurance Company Limited,
Motor III Party Claims Office,
No.4, Lady Desika Road, Mookambika Complex,
Mylapore, Chennai - 4.
- 3.The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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