IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1300 of 2024

1. Sellaiya
2. Rasathi ... Appellants

vs.

1. Ramasamy
2. The Divisional Manager,
The Oriental Insurance Company Limited,
No.4, Promenade Road,
2nd Floor, Cantonment, Trichy – 1. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 12.03.2024 in M.C.O.P. 209 of 2022 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

For Appellants : Ms.C.Sangamithirai
for Mr.C.Vidhusan

For R2 : Mr.N.Sampath

JUDGMENT

The appellants are the claimants in M.C.O.P. 209 of 2022 on the file of the Motor Accident Claims Tribunal, Perambalur. They filed the claim petition under Sections 140 and 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.30,00,000/- for the death of their son Paneer Selvam in a road accident that occurred on 21.12.2021.

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

On 21.12.2021, Paneer Selvam (since deceased) was riding his two wheeler bearing Registration Number TN-46-J-0982 on Kiliyur – V.Agaram road and at about 9.00 a.m., a speeding Tata Sumo car bearing Registration Number TN-46-W-7555 came in the opposite direction and hit the two wheeler, as a result of which, Paneer Selvam (deceased) sustained injuries all over his body. He was immediately rushed to Government Hospital, Perambalur. However, he succumbed to injuries on 24.12.2021.

3. According to the claimants, the rash and negligent driving of the driver of the Tata Sumo car bearing Registration Number TN-46-W-7555 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 them.

4. In the Tribunal, the owner of the Tata Sumo car remained absent and was set *ex parte*. 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, vide its orders dated 12.03.2024, fastened negligence on the part of the driver of the Tata Sumo Car bearing Registration Number TN-46-W-7555 and the deceased in the ratio 70:30 and directed the second respondent to pay compensation of Rs.17,39,567/- (70% of the total compensation of Rs.24,85,096/-) to the appellants (claimants) together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation. The Tribunal also

held that the liability of the owner of the car and the insurer is joint and several.

6. Aggrieved over the quantum of compensation and also fastening negligence on the part of the deceased to the extent of 30% by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Ms.C.Sangamithirai, learned counsel appearing for the appellants and Mr.N.Sampath, learned counsel appearing for the second respondent.

Negligence

8. A perusal of the records shows that the FIR (Ex.P1) was registered against the driver of the Tata Sumo car bearing Registration Number TN-46-W-7555. Thiru. Raju (P.W.2), the eyewitness to the occurrence had clearly spoken about the rash and negligent driving of the driver of the Tata Sumo car. Nothing useful was suggested to P.W.2 during the course of cross examination to discredit or disbelieve his

versions. The manner of accident also shows that the driver of the car was rash and negligent in driving his vehicle. Therefore, the Tribunal was wrong in fastening contributory negligence on the part of the deceased to the extent of 30% on the ground that (i) there was a head-on collision between the car and the two wheeler and (ii) the deceased was not wearing helmet at the time of accident. Moreover, there is nothing on record to show that the deceased also contributed to the accident.

Quantum

9. In the claim petition, it is contended that the deceased was working as a supplier in a hotel earning a sum of Rs.17,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.6,500/-. The accident took place in the year 2021 and the deceased was aged 20 years on the date of accident. In the circumstances, this Court is of the opinion that fixing notional monthly income of the deceased as 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. 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.16,000/-

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

After 1/2 deduction = Rs.11,200/-

Loss of dependency

= Rs.11,200/- x 12 x 18

= Rs.24,19,200/-

In addition to that the claimants are entitled to Rs.88,000/- (44,000 x 2), 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.25,40,200/- (24,19,200 + 88,000 + 16,500 + 16,500= 25,40,200) as shown in the following tabular column.

S.No.	*Head*	*Amount granted by this court*
1.	Loss of dependency	Rs.24,19,200/-
2.	Loss of consortium (Rs.44,000/- x 2)	Rs.88,000/-
3.	Funeral expenses	Rs.16,500/-
4.	Loss of Estate	Rs.16,500/-
Total		**Rs.25,40,200/-**

10. Thus, the compensation awarded by the Tribunal is enhanced to Rs.25,40,200/- that would carry interest at the rate of 7.5% per annum.

11. In the result,

i. The Civil Miscellaneous Appeal is partly allowed. No costs.

ii. The contributory negligence fastened on the part of the deceased is set aside.

iii. The compensation awarded by the Tribunal is enhanced to Rs.25,40,200/-.

iv. The appellants are directed to pay the 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.

v. The second respondent, the Oriental Insurance Company Limited, Trichy, is directed to deposit the enhanced compensation amount i.e., Rs.25,40,200/- (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. 209 of 2022 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

vi. 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.

30.10.2024

Index : Yes/No
Speaking/Non-speaking order

mtl

To

1.The Motor Accidents Claims Tribunal,
Principal District Court, Perambalur.

2. The Divisional Manager,
The Oriental Insurance Company Limited,
No.4, Promenade Road,
2^{nd} Floor, Cantonment, Trichy – 1.

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

R.HEMALATHA, J.

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C.M.A.No.1300 of 2024

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