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CMA.No.1305 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1305 of 2024

Meharunnisha

... Appellant

vs.

1. T.Ramalingam

2. The Manager,
United India Insurance Company Limited,
Silingi Building, 4th Floor,
No.134, Greams Road,
Chennai - 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 28.08.2023 in M.C.O.P. 191 of 2022 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.K.Swaminathan



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JUDGMENT

The appellant is the claimant in M.C.O.P. 191 of 2022 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. She filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.35,00,000/- for the death of her husband in a road accident that took place on 25.12.2021.

2. The brief case of the appellant / claimant is as follows :

On 25.12.2021, Syed Akthar Hussain (since deceased) was riding his two wheeler bearing Registration Number TN-19-AB-5248 on Chengalpattu - Kunnnavakkam Road. When he was nearing Primary Health Centre, Kunnnavakkam, a speeding bus bearing Registration Number TN-19-W-4455 hit the two wheeler driven by Syed Akthar Hussain (deceased), as a result of which, he sustained injuries all over his body. He was immediately rushed to the Government Medical College and Hospital, Chengalpattu. However, he succumbed to injuries on 01.01.2022.

3. According to the claimant, the rash and negligent driving of the driver of the bus bearing Registration Number TN-19-W-4455 was the



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cause of the accident and that since the said vehicle was insured with the second respondent, the United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to her.

4. In the Tribunal the owner of the bus 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 after analysing the evidence on record, fastened negligence on the part of the driver of the bus and awarded compensation of Rs.12,47,000/- to the appellant / claimant 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 28.08.2023.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant / claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.



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7. Heard Mr.K.Varadha Kamaraj, learned counsel appearing for the appellant and Mr.K.Swaminathan, learned counsel appearing for the second respondent.

8. Mr.K.Varadha Kamaraj, learned counsel appearing for the appellant contended that the deceased was working in a provision store as well as a load man earning a sum of Rs.30,000/- per month. However, the Tribunal fixed the notional monthly income of the deceased only as Rs.12,000/-, which, according to him, is very meagre. He therefore, prayed for enhancement of the notional income of the deceased.

9. Per contra Mr.K.Swaminathan, 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. It is seen from the records that the deceased was aged 48 years and the accident took place in the year 2021. Though it is contended



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by the claimant that the deceased was earning a sum of Rs.30,000/- per month and the same has not been substantiated by her by adducing acceptable oral / documentary evidence. In the absence of income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.12,000/-. 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.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**, 25% is added towards future prospects of the deceased. Since there is only one dependent, 1/3rd of the deceased's income should be deducted towards his personal expenses. The deceased was aged 48 years on the date of accident and 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.16,000/-

25% Future Prospects = Rs.20,000/-



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After 1/3 deduction = Rs.13,333/-

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Loss of dependency

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

= Rs.20,79,948/-

In addition to that the claimant is entitled to Rs.44,000/-, 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 claimant is entitled to a total compensation of Rs.21,56,948/- (20,79,948 + 44,000 + 16,500 + 16,500 = 21,56,948) 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.20,79,948/-
2.	Loss of consortium	Rs.44,000/-
3.	Funeral expenses	Rs.16,500/-
4.	Loss of Estate	Rs.16,500/-
Total		Rs.21,56,948/-

11. Thus, the compensation awarded by the Tribunal is enhanced



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from Rs.12,47,000/- to Rs.21,56,948/- 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.12,47,000/- to Rs.21,56,948/-.
- iii. The appellant / claimant is 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 United India Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.21,56,948/- (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



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the date of receipt of a copy of this order to the credit of M.C.O.P.
191 of 2022 on the file of the Motor Accident Claims Tribunal, II
Small Causes Court, Chennai.

v. On such deposit being made, the appellant / claimant is at liberty to
withdraw the same as per the orders passed by the Tribunal after
following due process of law.

10.09.2024

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

To

1.The Motor Accidents Claims Tribunal,
II Small Causes Court, Chennai.

2. The Manager,
United India Insurance Company Limited,
Silingi Building, 4th Floor,
No.134, Greams Road,
Chennai - 600 006.

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

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R.HEMALATHA, J.
mtl



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