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CMA.No.1210 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1210 of 2023

1. Jayarani
2. Minor. Abishek
- 3.Minor. Jessica Sandra
(Minors are represented by their mother
and natural guardian first appellant)
- 4.C.Malliga
- 5.M.Chandran

... Appellants

vs.

1. R.Sathish
2. The Iffco-Tokio General Insurance Company Limited (HUB)
having its office at
Habibullah Road, T.Nagar,
Chennai – 17.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 03.01.2023 in M.C.O.P. 121 of 2020 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Tiruvallur at Poonamallee.



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For Appellants : Mr.K.Varadha Kamaraj
R1 : No appearance
For R2 : Mr.N.Somasundaar

J U D G M E N T

The appellants are the claimants in M.C.O.P. 121 of 2020 on the file of the Motor Accident Claims Tribunal, Tiruvallur at Poonamallee. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.1,00,00,000/- for the death of one Suman (husband of claimant 1 ; father of claimants 2 and 3 ; son of claimants 4 and 5) in a road accident that took place on 12.08.2020.

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

On 12.08.2020, Suman (since deceased) was riding his two wheeler bearing Registration Number TN-20-CK-1049 on Chennai – Bangalore National Highways and when he was nearing Nazarathpet signal, a speeding tractor bearing Registration Number TN-20-BH-3843 rammed the two wheeler, as a result of which, Suman died on spot.



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3. According to the claimants, the rash and negligent driving of the driver of the tractor bearing Registration Number TN-20-BH-3843 was the cause of the accident and that since the said vehicle was insured with the second respondent, the Iffco-Tokio 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 tractor remained absent and was set *ex parte*. The second respondent, the Iffco-Tokio 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, vide its orders dated 03.01.2023, fastened negligence on the part of the driver of the tractor bearing Registration Number TN-20-BH-3843. Since the driver of the tractor did not have a valid driving license, the Tribunal directed the second respondent Insurance Company to pay compensation of Rs.25,29,200/- to the claimants together with interest at the rate of 7.5% per annum from the



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date of petition till the date of realisation, in the first instance and then recover the same from the owner of the vehicle on the same cause of action. (Pay and Recover)

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 Mr.K.Varadha Kamaraj, learned counsel appearing for the appellants and Mr.N.Somasundar, learned counsel appearing for the second respondent.

8. Mr.K.Varadha Kamaraj, learned counsel appearing for the appellants would contend that the deceased was a post graduate in Biochemistry earning a sum of Rs.35,000/- per month. However, the Tribunal fixed the notional monthly income of the deceased only as Rs.12,000/-. He therefore, prayed for enhancement of the notional income of the deceased.



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9. Per contra Mr.N.Somasundaar, 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. A perusal of the records shows that Suman (deceased) was appointed as sales supervisor in M360 Advertisement Company on a consolidated salary of Rs.35,000/- per month. This certificate was issued by one Thiru.Balaji Balasubramani (P.W.3), the owner of the said company. However, the employer did not produce relevant records to show that the deceased was actually paid a salary of Rs.35,000/- per month. Moreover, P.W.3 admitted that the deceased was not employed in their company during the accident period. It is pertinent to point out that the deceased was a post graduate in Biochemistry and was aged 40 years on the date of the accident. Considering these aspects, this Court is of the opinion that fixing notional monthly income of the deceased as



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Rs.20,000/- 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 dependants 1/4th is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 15 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.20,000/-

40% Future Prospects = Rs.28,000/-

After 1/4 deduction = Rs.21,000/-

Loss of dependency

= Rs.21,000/- x 12 x 15

= Rs.37,80,000/-

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



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entitled to a total compensation of Rs.40,10,000/- (37,80,000 + 2,00,000 +15,000 + 15,000= 40,10,000) 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.37,80,000/-
2.	Loss of consortium (Rs.40,000/- x 5)	Rs.2,00,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.40,10,000/-

11. Thus, the compensation awarded by the Tribunal is enhanced to Rs.40,10,000/- that would carry interest at the rate of 7.5% per annum.

12. In the result,

- The Civil Miscellaneous Appeal is partly allowed. No costs.
- The compensation awarded by the Tribunal is enhanced to Rs.40,10,000/-.
- The appellants / claimants 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



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draft the decree only after receipt of the Court fee.

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iv. The second respondent, the Iffco-Tokio General Insurance Company Limited, Chennai, is directed to deposit the enhanced compensation amount i.e., Rs.40,10,000/- (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 / uploading of this order to the credit of M.C.O.P. 121 of 2020 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Tiruvallur at Poonamallee, in the first instance and then recover the same from the owner of the vehicle on the same cause of action. (Pay and Recover)

v. Apportionment :

1st claimant / Wife	Rs.10,10,000/- (with interest and costs)
2nd claimant / Son (Minor)	Rs.12,50,000/-
3rd claimant / Daughter (Minor)	Rs.12,50,000/-
4th claimant / Mother	Rs.2,50,000/-
5th claimant / Father	Rs.2,50,000/-



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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
mtl



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To

- 1.The Motor Accidents Claims Tribunal,
II Additional District and Sessions Court, Tiruvallur at Poonamallee
2. The Iffco-Tokio General Insurance Company Limited (HUB)
having its office at
Habibullah Road, T.Nagar,
Chennai – 17.
- 3.The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

mtl

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