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C.M.A.No.2081 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2081 of 2024

1. Jayalakshmi
2. Murugan

... Appellants

vs.

1. K.Subramaniyan

2. M/s.The New India Assurance Company Limited,
Divisional Office at TP Hub, Sedhu Krishna Trade Centre,
No.133/31-A, Trichy Main Road, Gugai,
Salem.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 10.10.2022 in M.C.O.P.No.1214 of 2020 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

For Appellants : Mr.R. Navaneetha Krishnan
For R2 : Mr.R.Neethiperumal

JUDGMENT

The appellants are the claimants in M.C.O.P.1214 of 2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

They filed the claim petition under Section 166 of the Motor Vehicles Act,



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1988 seeking compensation of Rs.30,00,000/- for the death of their minor daughter Aigiri Ankita, in a road accident that took place on 03.01.2020.

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

On 03.01.2020, Aigiri Ankita (deceased) aged 1½ years was travelling as a pillion rider in a two wheeler bearing Registration Number TN-93-2271 on Dharmapuri - Salem Main Road. When she was nearing Thoppur canteen bus stop, a speeding lorry bearing Registration Number KA-01-AH-4693 belonging to the first respondent, hit the two wheeler causing instantaneous death of Aigiri Ankita.

3. According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration Number KA-01-AH-4693 was the cause of the accident and that since the said vehicle was insured with the second respondent, the New India Assurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the first respondent remained absent and



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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 fixed negligence on the part of the driver of the lorry and awarded a consolidated sum of Rs.5,00,000/- 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 10.10.2022. The Tribunal also held that the liability of the first and second respondents are joint and several.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mr.R.Navaneetha Krishnan, learned counsel appearing for the appellants and Mr.R.Neethiperumal, learned counsel appearing for the second respondent.



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8. Mr.R.Navaneetha Krishnan, learned counsel for the appellants relied on the decision of a single judge of this Court in ***M.Ganesamoorthy and others vs. The Managing Director, Tamil Nadu State Transport Corporation, Villupuram*** in ***C.M.A.Nos.2777 and 2778 of 2022 dated 19.03.2023*** and contended that this Court had fixed Rs.5,000/- as notional monthly income for a minor child aged 2½ years. He therefore prayed for enhancement of compensation.

9. Per contra, Mr.R.Neethiperumal, learned counsel appearing for the second respondent / the New India Assurance Company Limited, 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.

10. In ***Kishan Gopal and another vs. Lala and others*** reported in ***2013 (2) TN MAC 358***, the Hon'ble Supreme Court fixed the notional income of a minor child as Rs.30,000/- per annum and granted a sum of Rs.50,000/- under the other conventional heads. The accident in ***Kishan Gopal and another vs. Lala and others*** (cited supra) happened in the year



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2013. In the present case, considering the passage of time and the age of the victim child, fixing Rs.5,000/- per month as notional income of the deceased would meet the ends of justice. The proper multiplier to be adopted in the instant case is 15, as per the decision in ***Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121***. Calculation for loss of dependency is worked out here under.

Calculation :

$$\text{Notional Income} = \text{Rs.5,000/-} \times 12 = \text{Rs.60,000/-}$$

Loss of dependency :

$$= \text{Rs.60,000/-} \times 15$$

$$= \text{Rs.9,00,000/-}$$

In addition to that the claimants are entitled to Rs.80,000/- (40,000 x 2), Rs.15,000/- and Rs.15,000/- towards "Loss of Consortium, Funeral Expenses and Loss of Estate" respectively as per the decision in ***National Insurance Company Limited Vs. Pranay Sethi and others*** (cited supra).

Thus, the claimants are entitled to a total compensation of Rs.10,10,000 /- (9,00,000 + 80,000 +15,000 +15,000 = 10,10,000) as shown in the following tabular column.



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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	9,00,000/-
2.	Loss of consortium	80,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
Total		10,10,000/-

11. Thus, the compensation awarded by the Tribunal is enhanced from Rs.5,00,000/- to Rs.10,10,000/- 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.5,00,000/- to Rs.10,10,000/-.
- 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 first respondent and the second respondent, the New India



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Assurance Company Limited are directed to deposit the compensation amount i.e., Rs.10,10,000/- (less the amount already deposited) jointly and severally, 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.1214 of 2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

- 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. The appellants/claimants are not entitled to claim any interest for the period of delay of 395 days in filing this appeal.

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Index : Yes/No

Speaking/Non-speaking order
mtl



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To

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

2. M/s.The New India Assurance Company Limited,
Divisional Office at TP Hub, Sedhu Krishna Trade Centre,
No.133/31-A, Trichy Main Road, Gugai,
Salem.

3. The Section Officer, V.R. Section, Madras High Court, Chennai.



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R.HEMALATHA, J.
mtl

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