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CMA.No.2072 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2072 of 2024

1.Vedhavidhya

2.Minor. Balamurugan

3.Minor. Sivagnana Sri

4.Selvaraj

... Appellants

(Appellants 2 and 3 are represented
by their next friend mother / guardian
Vedhavidhya)

vs.

1.The Joint Director of Health Services,
Chennai.

2.The Branch Manager,
National Insurance Company Limited,
No.1, Infantry Road, Near Alankar Theatre,
IOB Upstairs, Vellore.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 23.09.2021 in M.C.O.P.No.375 of 2018 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Vellore at Tirupattur.



Appellants : Mr.PA.Sudesh Kumar
For R1 : Mr.B.Tamil Nidhi, AGP
For R2 : Mr.C.Paranthaman

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.375 of 2018 on the file of the Motor Accident Claims Tribunal / III Additional District Judge, Vellore at Tirupattur. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.50,00,000/- for the death of Sivakumar, (the husband of the first claimant, father of the claimants 2 and 3 and son of the fourth claimant) in a road accident that took place on 11.03.2018.

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

On 11.03.2018, Sivakumar (deceased) was driving his new Hero Splendor Bike (unregistered) on Hosur – Krishnagiri National Highways Road. When he was nearing Chinna at about 23.50 hours an Ambulance van bearing Registration Number TN-25-G-0651 belonging to the first respondent and insured with the second respondent came in a high speed and rear ended the two wheeler, as a result of which, Sivakumar fell down and sustained injuries. He was immediately rushed to the Government



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Hospital, Krishnagiri from where he was referred to the Government Hospital at Dharmapuri. However, he succumbed to injuries on 12.03.2018.

3. According to the claimants, the rash and negligent driving of the driver of the Ambulance van was the cause of the accident and that since the owner of the Ambulance van had insured his vehicle with the second respondent, the National Insurance Company Limited, the owner and the insurer of the Ambulance van are jointly and severally liable to pay compensation to the claimants.

4. The first respondent remained absent and was set *ex parte* in the Tribunal. 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, awarded



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a compensation of Rs.17,53,260/- to the appellants together with interest at the rate of 7.5% per annum from the date of petition till the date of realization, vide its orders dated 23.09.2021.

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, seeking for enhancement of compensation amount.

7. Heard Mr.PA.Sudesh Kumar, learned counsel appearing for the appellants, Mr.B.Tamil Nidhi, learned Additional Government Pleader appearing for the first respondent and Mr.C.Paranthaman, learned counsel for the second respondent.

8. The deceased Sivakumar was a tailor by profession. In the absence of income proof, the Tribunal fixed the monthly income of the deceased as Rs.12,000/-. It is pertinent to point out that the accident took place in the year 2018 and in the facts and circumstances, this Court is of the opinion that fixing the notional monthly income of the deceased at



Rs.14,000/- would meet the ends of justice. The deceased was aged 30 years on the date of the accident and 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% should be added towards future prospects of the deceased. Since there are four dependents, 1/3 of the deceased's income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 17 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.14,000/-

40% Future Prospects = Rs.5,600/-

Total = Rs.14,000/- + Rs.5,600/- = Rs.19,600/-

Loss of dependency :

= Rs.19,600/- x 12 x 17 x 2/3

= Rs.26,65,600/-

In addition to that the claimants are entitled to Rs.40,000/-, 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*



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Pranay sethi and others (cited supra). Thus, the claimants are entitled to a total compensation of Rs.28,55,600/- (26,65,600 + 1,60,000 + 15000 + 15000= 28,55,600) which is extracted here under.

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs.26,65,600/-
2.	Loss of consortium (Rs.40,000/- x 4)	Rs.1,60,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.28,55,600/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.17,53,260/- to Rs.28,55,600/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.17,53,260/- to Rs.28,55,600/-.



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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, National Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.28,55,600 /- (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 to the credit of M.C.O.P.No.375 of 2018 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Vellore at Tirupattur.

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. However, it is made clear that the appellants are not entitled for interest for the period of delay in



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filing this appeal on the amount enhanced by this Court.

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

To

1.The Motor Accidents Claims Tribunal,
III Additional District Judge, Vellore at Tirupattur.

2.The Branch Manager,
National Insurance Company Limited,
No.1, Infantry Road, Near Alankar Theatre,
IOB Upstairs, Vellore.

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

R.HEMALATHA, J.
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