IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.2087 of 2024

1. Lakshmi
2. Kandasamy @ Kanthasamy
3. Sudhakar
4. Amutha ... Appellants

vs.

1. G.Mahendran

2. M/s.The Oriental Insurance Co. Limited,
Having Divisional Office at Siva Complex,
II Floor No.22C, Saradha College Main Road,
Salem District. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 01.11.2023 in M.C.O.P.No.1293/2022 on the file of the Motor Accident Claims Tribunal, Salem.

For Appellants : Mr.R.Navaneetha Krishnan

For R2 : Mr.J.Chandran

JUDGMENT

The appellants are the claimants in M.C.O.P.No.1293/2022 on the file of the Motor Accident Claims Tribunal, Salem. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.40,00,000/- for the death of one Palanisamy, (son of the claimants 1 and 2 and brother of the claimants 3 and 4) in a road accident which happened on 06.02.2022.

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

On 06.02.2022, Palanisamy (deceased) was riding a two-wheeler bearing registration number TN 30-AL-0727 on Salem-Mettur main Road. When he was nearing Mettur R.S. old RTO office branch Road, a speeding lorry bearing registration number TN 51-AC-9952 which came in the opposite direction hit the two wheeler, as a result of which, he sustained injuries all over his body. He was immediately rushed to the Government Hospital, Mettur, from where he was referred to Government Hospital, Salem. However, he succumbed to injuries on 07.02.2022.

3. According to the claimants, the rash and negligent driving of the driver of the lorry bearing registration number TN 51-AC-9952 was the cause of the accident and that since the said lorry 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. The Tribunal, after analysing the evidence on record, awarded a compensation of Rs.10,05,000/- 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 01.11.2023.

5. Aggrieved over the quantum of compensation awarded passed by the Tribunal, the appellants / claimants have filed the present appeal under Section 173 of the Motor Vehicles Act.

6. Heard Mr.R.Navaneetha Krishnan, learned counsel appearing for the appellants and Mr.J.Chandran, learned counsel for the second respondent.

7. Mr.R.Navaneetha Krishnan, learned counsel appearing for the appellants contended that the deceased was an electrician, aged about 39 years on the date of the accident, earning Rs.30,000/- per month. However, the Tribunal had fixed a very meagre sum of Rs.10,000/- including the future prospects, as his monthly notional income. He therefore prayed for enhancing the notional income of the deceased.

8. Per contra Mr.J.Chandran, learned counsel appearing for the respondent, contended that the Award passed by the Tribunal is based on well laid 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.

9. In the claim petition, it is contended that the deceased was aged 39 years and was an electrician. The Tribunal fixed the notional monthly income of the deceased as Rs.10,000/- including future prospects. It is pertinent to point out that the accident took place in the year 2022 and in the facts and circumstances, 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****,* 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 deceased was aged 39 years on the date of the accident and 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.16,000/-

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

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

Loss of dependency :

= Rs.11,200/- x 12 x 15

= Rs.20,16,000/-

In addition to that the claimants are entitled to Rs.1,76,000/- (44,000/-x 4), 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.22,25,000/- (20,16,000 + 1,76,000 + 16,500 + 16,500 = 22,25,000) as shown in the following tabular column:

S.No.	***Head***	***Amount granted by this court***
1.	Loss of dependency	Rs.20,16,000 /-

S.No.	Head	Amount granted by this court
2.	Loss of consortium (Rs.44,000/- x 4)	Rs.1,76,000/-
3.	Funeral expenses	Rs.16,500/-
4.	Loss of Estate	Rs.16,500/-
Total		Rs.22,25,000/-

10. The compensation awarded by the Tribunal is enhanced from Rs.10,05,000/- to Rs.22,25,000/- which 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 compensation awarded by the Tribunal is enhanced from Rs.10,05,000/- to Rs.22,25,000/-.

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 / owner and the second respondent / the Oriental Insurance Company Limited are directed to deposit the enhanced compensation amount i.e., Rs.22,25,000/- jointly and severally (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.1293/2022 on the file of the Motor Accident Claims Tribunal, Special District Judge, 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. No costs.

13.08.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
vum

R.HEMALATHA, J.

vum

To

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

2. M/s.The Oriental Insurance Co. Limited,

Having Divisional Office at Siva Complex,
II Floor No.22C, Saradha College Main Road,
Salem District.

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

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