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CMA.No.1584 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.1584 of 2024

1. B.Saktheeswari
2. B.Kamran
3. K.Solachana

... Appellants

vs.

1. M.Sathish Kumar

2. Magma HDI General Insurance Company Limited,
Navin's Presidium,
A-Block, 3rd Floor,
New No.17-19, Old No.103-7A,
Nelson Manickam Road,
Chennai - 600 029.

...

Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 10.04.2024 in M.C.O.P.532/2023 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellants : Mr.K.Balaji

For R2 : Mrs.R.Sreevidhya



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J U D G M E N T

The appellants are the claimants in M.C.O.P.532/2023 on the file of the Motor Accident Claims Tribunal, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, and Rule 3 of the M.A.C.T.Rules, seeking compensation of Rs.49,00,000/- for the death of one Balamurugan (husband of the first claimant and father of the claimants 2 and 3) in a road accident which happened on 18.12.2022.

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

On 18.12.2022, Balamurugan (deceased) was walking along the left hand side of the G.S.T.Road, Kadaperi, Chennai and a two wheeler bearing Registration number TN-06-Z-9861, hit him, as a result of which, he sustained injuries all over his body. He was immediately rushed to Government Hospital, Chrompet from where he was referred to Rajiv Gandhi Government Hospital, Chennai. However, he succumbed to injuries on the same day.

3. According to the claimants, the rash and negligent driving of the driver of the two wheeler bearing Registration number TN-06-Z-9861



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

4. In the Tribunal, the owner of the vehicle remained absent and was set *exparte*. The second respondent, Insurance Company 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 two wheeler and directed the owner and the Insurer to pay compensation of Rs.14,28,900/- jointly and severally, 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 10.04.2024.

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.

7. Heard Mr.K.Balaji, learned counsel for the appellants and



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Mrs.R.Sreevidhya, learned counsel for the second respondent.

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8. Mr.K.Balaji, learned counsel appearing for the appellants contended that the deceased, was running a business in the name and style of Jai Arts, earning a sum of Rs.25,000/- per month, but, the Tribunal had fixed a meagre sum of Rs.13,000/- as his monthly notional income. He, therefore prayed for enhancing the notional income of the deceased.

9. Per contra Mrs.R.Sreevidhya, learned counsel appearing for the second 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.

10. A perusal of the records shows that the deceased was aged 54 years on the date of accident. According to the claimants, the deceased was running business in the name and style of 'Jai Arts', earning a sum of Rs.25,000/- per month. In the absence of income proof, the Tribunal has awarded a sum of Rs.13,000/- per month. 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 as 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**, 10% is added towards future prospects of the deceased. Since there are three dependents, 1/3rd of the deceased's income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 11 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 10% Future Prospects = Rs.17,600/-

After 1/3 deduction = Rs.11,733/-

Loss of dependency :

= Rs.8,333/- x 12 x 11

= Rs.15,48,756/-

In addition to that the claimants are entitled to Rs.1,32,000/- (44,000/-x3),



Rs.16,500/- and Rs.16,500/- towards 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.17,13,756/- (15,48,756 + 1,32,000 + 16,500 + 16,500 = 17,13,756) 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. 15,48,756 /-
2.	Loss of consortium (Rs.44,000/- x 3)	Rs.1,32,000/-
3.	Funeral expenses	Rs.16,500/-
4.	Loss of Estate	Rs.16,500/-
Total		Rs.17,13,756/-

11. Thus, the compensation awarded by the Tribunal is enhanced from Rs.14,28,900/- to Rs.17,13,756/- which would carry interest at the rate of 7.5% per annum.

12. In the result,



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- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.14,28,900/- to Rs.17,13,756/-.
- 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 liability of the first respondent (owner) and the second respondent (the Magma HDI General Insurance Company Limited) is joint and several and the second respondent / Magma HDI General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.17,13,756/- (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.532/2023 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.
- v. On such deposit being made, the claimants are at liberty to



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withdraw the same in accordance with law. The ratio of apportionment made by the Tribunal shall be kept intact.

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

To

- 1.The Motor Accident Claims Tribunal
IV Court of Small Causes, Chennai.
- 2.The Section Officer, VR Section,
Madras High Court, Chennai.

R.HEMALATHA, J.



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