IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1942 of 2023

1. S. Lakshmi
2. S. Ramesh
3. Minor. S. Kaviya represented by mother
   S. Lakshmi .... Appellants

vs.

1. S. Vignesh

2. The National Insurance Company Limited,
   No.751, Anna Salai, Chennai -2. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 29.09.2022 in M.A.C.T.O.P.92/2016 on the file of the III Additional District and Sessions Court, Motor Accidents Claims Tribunal, Tiruvallur at Poonamallee.

For Appellants	: Ms.A. Subadra
R1	: No appearance.
For R2	: No appearance.

J U D G M E N T

The appellants are the claimants in M.A.C.T.O.P.92 / 2016 on the file of the III Additional District and Sessions Court, Motor Accidents Claims Tribunal, Tiruvallur at Poonamallee. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.8,00,000/- for the death of one S. Srinivasan (husband of the first claimant, father of the claimants 2 and 3) in a road accident that took place on 22.05.2015.

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

2.1. On 22.05.2015 S. Srinivasan (deceased) was walking along Kundrathur-Sriperumpudur main Road. When he was nearing R.A. Nagar, Srukulathur, a speeding motorcycle bearing Registration Number TN-22-CD-6481, hit him, as a result of which he sustained injuries all over his body and was immediately rushed to the Hospital. However, he succumbed to injuries.

3. According to the claimants, the rash and negligent driving of the rider of the motorcycle bearing Registration Number TN-22-CD-6481, was the cause of the accident and that since the said vehicle was insured with the second respondent, the National 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 motorcycle remained absent and was set *ex parte*. 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 rider of the motorcycle bearing Registration Number TN-22-CD-6481, and directed the second respondent, insurer of the said vehicle, to pay compensation of Rs.6,23,000/- to the claimants 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 29.09.2022.

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 Mrs. A. Subadra, learned counsel appearing for the appellants. No representation on behalf of the second respondent Insurance Company.

8. Mrs.A. Subadra, learned counsel appearing for the appellants contended that the deceased was aged 65 years and was working as a construction worker earning a sum of Rs.700/- per day. However, the Tribunal had fixed the notional monthly income of the deceased only as Rs.8,000/-, which, according to her, is on the lower side. She therefore, prayed for enhancement of monthly income of the deceased.

9. The deceased was working as a construction worker. Though in the claim petition it is stated that the deceased was earning a sum of Rs.7,00/- per day, no income proof was adduced by the claimants. Considering the year of accident and the age of the deceased, fixing the

notional monthly income of the deceased as Rs.10,000/- would be proper. The deceased was aged 65 years on the date of the accident and therefore, he is not entitled to get future prospects as per the decision in ***National Insurance Co. vs Pranay sethi and others*** reported in ***2017 (2) TNMAC 601.*** Since the deceased had three dependents, 1/3 should be deducted towards his personal expenses. The deceased was aged 65 years on the date of the accident and the proper multiplier to be adopted in the instant case is 7 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.10,000/-

After 1/3 deduction = Rs.6,666/-

Loss of dependency

= Rs.6666/- x 12 x 7

= Rs.5,59,944/- (Rounded off to Rs.5,60,000/-)

In addition to that the claimants are entitled to Rs.1,20,000/- (40,000 x 3), 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).

9.1. The enhanced amount under the different heads are detailed hereunder:

S.No.	***Head***	***Amount granted by this court (Rs.)***
1.	Loss of dependency	5,60,000/-
2.	Loss of consortium (Rs.40,000/- x 3)	1,20,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	7,10,000/-

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

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.6,23,000/- to Rs.7,10,000/-.

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 second respondent, the The National Insurance Company Limited,Chennai, is directed to deposit the enhanced compensation amount i.e., Rs.7,10,000/- (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. The ratio of apportionment made by the Tribunal shall be kept intact.

v. The appellants/claimants are not entitled to claim any interest for the period of delay of 130 days in filing this appeal.

vi. On such deposit being made, the appellants 1 and 2 are at liberty to withdraw their share as per the apportionment made by the

Tribunal after filing a proper petition for withdrawal. Since third appellants is a minor, her share, as per the apportionment made by the Tribunal, shall be deposited in a fixed deposit in any one of the Nationalised banks until she attains majority.

04.09.2024

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

To

1. III Additional District and Sessions Court,
   Motor Accidents Claims Tribunal,
   Tiruvallur at Poonamallee.

2. The National Insurance Company Limited,
   No.751, Anna Salai, Chennai -2.

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

R.HEMALATHA, J.

bga

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