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CMA.No.2025 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.2025 of 2024

1. Jeyamani

2. Chinnasamy

... Appellants

vs.

1. Maniyan

2. Venkateswaran

3. M/s. New India Assurance Co. Ltd.,
Represented by its Divisional Office,
Sedu Krishna Trade Centre, 2nd Floor,
Trichy main Road, Gugai, Salem.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 07.02.2023 in M.C.O.P.No.248 of 2022 on the file of the Special District Judge/MCOP Tribunal, Salem.

For Appellants	:	Mr.S.P. Yuvaraj
For R3	:	Mr. J. Chandran
R1 and R2	:	Dispensed with notice.



CMA.No.2025 of 2024

JUDGMENT

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The appellants are the claimants in M.C.O.P.No.248 of 2022 on the file of the Special District Judge/MCOP Tribunal, Salem, and they filed the said claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.40,00,000/- for the death of their son Tamilselvan, in a road accident that took place on 10.01.2022.

2. The case of the appellants/claimants in a nutshell is as follows:

2.1. On 10.01.2022, at about 1.30 p.m., Tamilselvan (deceased) was riding his two wheeler bearing Registration No.TN 47 T 2930 on the left hand side of Kangayam - Nathakadaiyur Road. When he was nearing Varathappampalayam, an Eicher lorry bearing Registration No.TN 40 F 6940 belonging to the second respondent and driven by the first respondent came with a high speed and hit the two wheeler, as a result of which, the deceased fell down and sustained injuries all over his body. He was immediately rushed to the Government Hospital, Kangayam. However, the doctors in the Government Hospital declared him as "brought dead".



CMA.No.2025 of 2024

2.2. According to the claimants the deceased was aged about 33

years and was working as a supervisor in M/s. Andavar Rice Mill, Kangayam, earning a monthly salary of Rs.25,000/-. It is also their contention that the rash and negligent driving of the driver of the Eicher lorry bearing Registration No.TN 40 F 6940 was the cause of the accident and that since the said vehicle was insured by the second respondent (owner of the vehicle) with the third respondent, all the respondents are jointly and severally liable to pay compensation to them.

3. The first and second respondents remained absent before the Tribunal and they were set ex parte. The third respondent, the New India Assurance Co. Ltd., contested the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4. The Tribunal after analysing the evidence on record, directed the second and third respondents to pay compensation of Rs.8,33,000/- to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The Tribunal also held that their liability to pay compensation was joint and several. Seeking to



CMA.No.2025 of 2024

enhance the compensation, the present appeal is filed by the claimants under Section 173 of the Motor Vehicles Act.

5. Heard Mr.S.P. Yuvaraj, learned counsel appearing for the appellants and Mr. J. Chandran, learned counsel appearing for the third respondent.

6. Mr.S.P. Yuvaraj, learned counsel appearing for the appellants contended that the deceased was aged 33 years on the date of accident and that all the claimants were totally dependant on the income of the deceased. It is also his contention that the deceased was earning a sum of Rs.25,000/- per month, but the Tribunal had fixed the notional income of the deceased only as Rs.8,000/- per month. According to him, the Tribunal had not fixed adequate amounts under other heads as per the decision rendered by the *Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601*. He therefore prayed for enhancement of compensation.



CMA.No.2025 of 2024

7. Per contra, Mr. J. Chandran, learned counsel appearing for the third respondent 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 at this stage.

8. It is pertinent to point out that the deceased was aged 33 years on the date of accident and according to the claimants he was the sole bread winner of the family. He was working in a Rice Mill as a Supervisor and therefore, his monthly income is fixed as Rs.14,000/-. To this sum, 40% should be added towards future prospects as per the decision of the Constitution Bench of the Honourable Supreme Court of India in *National Insurance Company Limited vs. Pranay Sethi and others (cited supra)*, and hence the monthly income of the deceased is fixed at Rs.19,600/- ($14,000 + 5,600 = 19,600$). Since the deceased died as a bachelor, 50% should be deducted towards his personal expenses and thus it would be a sum of Rs.9,800/- ($19,600 / 2 = 9,800$). The age of the deceased was 33 years on the date of accident and the proper multiplier to be adopted in the instant case is 16, as per the decision in *Sarla Verma*



CMA.No.2025 of 2024

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 :

Notional Income = Rs.19,600/-

After 1/2 deduction = Rs.9,800/-

Loss of dependency :

= Rs.9,800/- x 12 x 16

= Rs.18,81,600/-

In addition to that, as per the decision rendered by the Honourable Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others* (cited supra), the claimants are entitled to Rs.40,000/-, Rs.15,000/- and Rs.15,000/- towards "Loss of Consortium, Funeral Expenses and Loss of Estate" respectively. Since there are two dependants, a sum of Rs.80,000/- is granted towards loss of consortium (40000 x 2 = 80000). Thus, the claimant is entitled to a total compensation of Rs.19,91,600/- (18,81,600 + 80,000 + 15000 + 15000= 19,91,600) which is extracted hereunder.



CMA.No.2025 of 2024

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	18,81,600/-
2.	Loss of consortium	80,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
Total		19,91,600/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.8,33,000/- to Rs.19,91,600/- 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.8,33,000/- to Rs.19,91,600/- .

(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.



CMA.No.2025 of 2024

(iv) The third respondent / New India Assurance Co. Ltd.,

Salem, is directed to deposit the enhanced compensation amount i.e., Rs.19,91,600/- /- (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.248 of 2022 on the file of the Special District Judge/MCOP Tribunal, Salem. The appellants/claimants are not entitled to claim any interest for the period of delay of 388 days in filing this appeal.

(v) On such deposit being made, the appellants 1 and 2/ claimants 1 and 2 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.

07.08.2024

Index : Yes/No

Speaking/Non-speaking order
bga



CMA.No.2025 of 2024

To

1. The Special District Judge/MCOP Tribunal, Salem.
2. M/s. New India Assurance Co. Ltd.,
Represented by its Divisional Office,
Sedu Krishna Trade Centre, 2nd Floor,
Trichy main Road, Gugai, Salem.
3. The Section Officer, V.R. Section, Madras High Court, Chennai.



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CMA.No.2025 of 2024

R.HEMALATHA, J.

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C.M.A.No.2025 of 2024

07.08.2024