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CMA.No.1958 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1958 of 2023

- 1.Usha Rani
2. Ridhu Shree
3. Minor. Narine Karthick
4. Venkatachalam
5. Palaniamma

... Appellants

vs.

1. Professional Automative Private Limited,
S/W/D of Plot No.101 B 8, GIDC at Ranoli,
D1 Vadodara

2. National Insurance Company Limited,
TP HUB Divisional Office,
Sharadha College Road, Salem.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against Award dated 01.06.2022 passed in M.C.O.P.No.1832 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants : Mr. S.P. Yuvaraj

R1 : No appearance

For R2 : Mr. S. Arunkumar



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JUDGMENT

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The appellants are the claimants in M.C.O.P.No.1832 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. 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 one Karthikeyan (husband of the first claimant, father of the claimants 2 and 3 and son of the claimants 4 and 5) in a road accident that took place on 06.04.2019.

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

2.1. On 06.04.2019 Karthikeyan (deceased) was travelling as a pillion rider in a two wheeler bearing Registration Number MH 13 KM 5272 driven by one Chinnappa, on Zalaki-Solapur NH-13. When he was nearing Dhulakhed, Shrikant Shivaray Pujari Bricks Factory, Vijayapur, a truck bearing Registration Number GJ 06 AX 4438, belonging to the first respondent, hit the two wheeler causing his instantaneous death.

3. According to the claimants, the rash and negligent driving of



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the driver of the truck bearing Registration Number GJ 06 AX 4438, was the cause of the accident and that since the said vehicle was insured with the second respondent, the National Insurance Company Limited, Salem, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the first respondent remained absent and was set *ex parte*. 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 a compensation of Rs.20,55,000/- to the appellants/claimants together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation. The Tribunal also held that the liability of the respondents are joint and several.

6. Aggrieved over the quantum of compensation awarded by the



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Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mr. S.P. Yuvaraj, learned counsel appearing for the appellants and Mr. S. Arunkumar, learned counsel for the second respondent.

8. Mr. S.P. Yuvaraj, learned counsel appearing for the appellants contended that Karthikeyan (deceased) was doing lorry business and Auto consultancy earning a sum of Rs.30,000/-. However, the Tribunal had fixed the notional monthly income of the deceased only as Rs.15,000/-, which includes future prospects of 25%. He therefore, prayed for enhancement of the monthly income of the deceased.

9. Per contra, Mr.S.Arunkumar, learned counsel appearing for the second respondent/Insurance Company 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.



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10. It is seen from the records that the deceased was doing lorry business and Auto consultancy and the accident took place in the year 2019. However, no proof is filed by the claimants to show the actual income of the deceased. In the circumstances, this Court is of the view that fixing the notional income at Rs.15,000/- per month 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**, 25% is added towards future prospects of the deceased. Since the deceased had five dependents, 1/4 should be deducted towards his personal expenses. The deceased was aged 45 years on the date of the accident and the proper multiplier to be adopted in the instant case is 14 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.15,000/-

25% Future Prospects = Rs.18,750/-

After 1/4 deduction = Rs.14,063/-



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Loss of dependency

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= Rs.14,063/- x 12 x 14

= Rs.23,62,584/-

In addition to that the claimants are entitled to Rs.2,00,000/- (40,000 x 5), 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).

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

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	23,62,584/-
2.	Loss of consortium (Rs.40,000/- x 5)	2,00,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	25,92,584/-

This amount shall carry interest at the rate of 7.5% per annum from the



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date of claim petition till the date of deposit.

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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.20,55,000/- to Rs.25,92,584/-.
- 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 respondents are jointly and severally directed to deposit the enhanced compensation amount i.e., Rs.25,92,584/- (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 to the credit of MCOP.No.1832 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem, within a



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period of four weeks from the date of receipt of a copy of this order.

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The ratio of apportionment made by the Tribunal shall be kept intact. The appellants/claimants are not entitled to claim any interest for the period of delay of 263 days in filing this appeal, as per the orders of this Court dated 01.08.2023 in C.M.P.No.14396/2023.

- v. On such deposit being made, the appellants 1, 2, 4 and 5 are at liberty to withdraw their share as per the apportionment made by the Tribunal after filing a proper petition for withdrawal. Since the third appellant is a minor, his share, as per the apportionment made by the Tribunal, shall be deposited in a fixed deposit in any one of the Nationalised banks until they attain majority.

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Index : Yes/No

Speaking/Non-speaking order
bga

To

1. Motor Accident Claims Tribunal, Special District Court, Salem.



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2. Professional Automative Private Limited
S/W/D of Plot No.101 B 8, GIDC at Ranoli,
D1 Vadodara

3. National Insurance Company Limited,
TP HUB Divisional Office,
Sharadha College Road, Salem.

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



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R.HEMALATHA, J.

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