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CMA.No.1938 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1938 of 2023

1. Durgadevi
- 2.Minor Rakshan
- 3.Lakshmi

.... Appellants

vs.

1. Kailash Womens College Tharamangalam
Nangavalli Road Periyasoragai Post,
Mettur Taluk, Salem District.
2. Bajaj Alliance General Insurance Company Limited
No.68, SLS Tower, Cherry Road,
Hasthampatty, Salem District.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 01.03.2022 in M.C.O.P.467/2020 on the file of the Special District Court, Motor Accidents Claims Tribunal, Salem.

For Appellants	: Mr. S.P. Yuvaraj
R1	: No appearance.
For R2	: Mr. N. Vijayakumar



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J U D G M E N T

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The appellants are the claimants in M.C.O.P.467/2020 on the file of the Special District Court, Motor Accidents 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 Dineshkumar (husband of the first claimant, father of the second claimant and son of the third claimant) in a road accident that occurred on 03.03.2020.

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

2.1. On 03.03.2020 Dineshkumar (since deceased) was driving his two wheeler bearing Registration Number TN-52-T-3784 on Nangavalli-Tharamangalam Road and at about 9.00 a.m., a bus bearing Registration Number TN-37-AU-6219, came in the opposite direction and hit him resulting in his instantaneous death.

3. According to the claimants, the rash and negligent driving of the driver of the bus bearing Registration Number TN-37-AU-6219, was



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

4. In the Tribunal the owner of the bus 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 driver of the bus bearing Registration Number TN-37-AU-6219, and directed the respondents to pay compensation of Rs.14,85,000/- 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 01.03.2022. The Tribunal also held that the liability of the Insurance Company and the owner of the bus are joint and several.



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 Mr. S.P. Yuvaraj, learned counsel appearing for the appellants and Mr. N. Vijayakumar, learned counsel appearing for the second respondent.

8. Mr. S.P. Yuvaraj, learned counsel appearing for the appellants contended that the deceased was an electrician earning a sum of Rs.20,000/- per month. However, the Tribunal had fixed the notional monthly income of the deceased as Rs.10,000/- including future prospects of 40%. He therefore, prayed for enhancement of monthly income of the deceased.

9. Per contra, Mr. N. Vijayakumar, learned counsel 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



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same need not be disturbed.

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10. It is seen from the records that the deceased was an electrician by profession. The certificate (Ex.P11) issued by the Ministry of Skill Development and Entrepreneurship, National Council for vocational Training, shows that the deceased had completed the course of electrician. In the circumstances, fixing the 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**, 40% is added towards his future prospects. Since the deceased had three dependents, 1/3 should be deducted towards his personal expenses. The deceased was aged 28 years on the date of the accident and the proper multiplier to be adopted in the instant case is 17 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/-

40% of future prospects = Rs.22,400/-

After 1/3 deduction = Rs.14,934/-



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Loss of dependency

= Rs.14,934/- x 12 x 17

= Rs.30,46,536/-

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).

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	30,46,536/-
2.	Loss of consortium (Rs.40,000/- x 3)	1,20,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	31,96,536/-

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



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11. 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.14,85,000/- to Rs.31,96,536/-.
- 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.31,96,536/- (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.
- v. The enhanced compensation amount of Rs.31,96,536/, is apportioned to the claimants as below:

Durgadevi (first claimant)	Rs.7,96,536/- with costs and interest
Minor. Rakshan (second claimant)	Rs.18,00,000/-
Lakshmi (third claimant)	Rs.6,00,000/-



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- vi. On such deposit being made, the appellants 1 and 3 are at liberty to withdraw their share as per the apportionment made by this Court after filing a proper petition for withdrawal. Since the second appellant is a minor, his share shall be deposited in a fixed deposit in any one of the Nationalised bank until he attains majority.
- vii. The appellants/claimants are not entitled to claim any interest for the period of delay of 143 days in filing this appeal.

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Index : Yes/No

Speaking/Non-speaking order
bga

To

1. Special District Court, Motor Accidents Claims Tribunal, Salem.
2. Bajaj Alliance General Insurance Company Limited
No.68, SLS Tower, Cherry Road,
Hasthampatty, Salem District.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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