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CMA No.2262 of 2024
and C.M.P.No.17524 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA No.2262 of 2024
and
C.M.P.No.17524 of 2024

The Oriental Insurance Company Limited,
Vijayalakshmi Complex, First Floor,
Sathuvachari, Vellore District.

... Appellant

Vs.

1.Sumathi

2. Minor.S.Daseka
(Second respondent is represented
by her guardian/mother Sumathi, first respondent)

3.K.Gowri

... Respondents

(No relief is claimed against third respondent and is given up in this petition)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 20.02.2024 in M.C.O.P.No.72 of 2023 on the file of the Motor Accident Claims Tribunal, Sub Court, Ambur.



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For Appellant : Mr. M.Krishnamoorthy

For RR1 and 2 : Ms.A.Subadra
for Ms.M.Malar

J U D G M E N T

The Oriental Insurance Company Limited, Vellore, the second respondent in MCOP No.72 of 2023 on the file of the Motor Accident Claims Tribunal, Sub Court, Ambur, has filed the present appeal.

2. The respondents 1 and 2 filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.41,85,000/- for the death of one Sridhar (husband of first claimant and father of second claimant), in a road accident that took place on 21.06.2019.

3. The case of the claimants in a nutshell is as follows:

On 21.06.2019, Sridhar (deceased) was riding his two wheeler bearing Registration Number TN-83-BS-2900 on Ambur Bypass Road. When he was nearing Thuthipattu Teachers Colony, a speeding Bolero



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Pickup Van bearing Registration Number TN-83-6726, belonging to the third respondent, hit the two wheeler, as a result of which, Sridhar fell down and sustained injurious. He was immediately rushed to the Government Hospital, Ambur. However, he succumbed to injuries.

4. According to the claimants the rash and negligent driving of the driver of the Bolero Pickup Van bearing Registration Number TN-83-6726 was the cause of the accident and that since the said vehicle was insured with the appellant, the Oriental Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

5. In the Tribunal the third respondent remained absent and was set *ex parte*. The appellant, the Oriental Insurance Company Limited, resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.



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6. The Tribunal after analysing the evidence on record, fixed negligence on the part of the driver of the Bolero Pickup Van and awarded compensation of Rs.22,21,312/- to the claimants together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, vide its orders dated 20.02.2024.

7. Aggrieved over the quantum of compensation awarded by the Tribunal, the Insurance Company has filed the present appeal.

8. Heard Mr.M.Krishnamoorthy, learned counsel appearing for the appellant and Ms.A.Subadra, learned counsel appearing for the respondents 1 and 2.

9. Mr.M.Krishnamoorthy, learned counsel appearing for the appellant contended that the Tribunal had wrongly awarded 40% towards future prospects even though the deceased was aged 40 years on the date of the accident. He drew the attention of this Court to the Aadhar Card (Ex.P8) marked by the claimants in which the date of birth of the



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deceased was shown as 13.04.1979. He would also contend that the Tribunal had awarded a sum of Rs.50,000/- towards love and affection apart from granting Rs.80,000/- towards loss of consortium. He therefore, prayed for scaling down the Award passed by the Tribunal.

10. It is seen from the records that the Tribunal had rightly fixed the notional monthly income of the deceased as Rs.14,109/- based on the Cost of Inflation Index for the year 2007 - 2008. However, the Tribunal without considering the age of the victim had wrongly fixed 40% towards future prospects even though he had completed 40 years on the date of accident. 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**, the claimants are entitled only for loss of consortium and in the instant case the Tribunal after awarding a sum of Rs.80,000/- for loss of consortium had also granted Rs.50,000/- towards loss of love and affection. As per the decision of the Supreme Court of India in ***National Insurance Co. vs Pranay sethi and others*** (cited supra) 25% is added towards future prospects of the deceased. Since there are two dependents, 1/3rd of the



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deceased's income should be deducted towards his personal expenses. The deceased had completed 40 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.14,109/-

25% Future Prospects = Rs.17,636/-

Loss of dependency

= Rs.17,636/- x 12 x 14 x 2/3

= Rs.19,75,232/-

In addition to that the claimants are entitled to Rs.80,000/- (40,000 x 2), 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) and Rs.7,000/- towards Ambulance charges. Thus, the claimants are entitled to a total compensation of Rs.20,92,232/- (19,75,232 + 80,000 + 15,000 + 15,000 + 7,000 = 20,92,232) as shown in the following tabular column.



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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs.19,75,232/-
2.	Loss of consortium (Rs.40,000/- x 2)	Rs.80,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
5.	Ambulance charges	Rs.7,000/-
Total		Rs.20,92,232/-

11. Thus, the compensation awarded by the Tribunal is hereby scaled down to Rs.20,92,232/- from Rs.22,21,312/- and the said amount would carry interest at the rate of 7.5% per annum from the date of petition.

12. In the result,

i. The Civil Miscellaneous Appeal is partly allowed. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

ii. The compensation awarded by the Tribunal is hereby scaled down to Rs.20,92,232/-.

iii. The appellant / the Oriental Insurance Company Limited is directed



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to deposit the modified award amount i.e. Rs.20,92,232/- (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.72 of 2023 on the file of the Motor Accident Claims Tribunal, Sub Court, Ambur.

- iv. On such deposit being made by the appellant / the Oriental Insurance Company Limited, the claimants are entitled to withdraw the same, after following due process of law and as per the apportionment made by the Tribunal.
- v. The appellant / the Oriental Insurance Company Limited is at liberty to withdraw the amount deposited by them over and above the compensation awarded by this court.

19.08.2024

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



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To

1. The Motor Accident Claims Tribunal,
Sub Court, Ambur.
2. The Section Officer, VR Section, Madras High Court, Chennai.



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R. HEMALATHA, J.

mtl

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