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CMA.No.3513 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.3513 of 2021

1. K. Gayathri
2. Minor Riyashini
- 3.Minor Riyashan
4. Dhanakodi

.... Appellants

vs.

1. I. Suresh
2. Reliance General Insurance Company Limited,
Reliance House, 6th Floor,
6, Haddows Road,
Nungambakkam, Chennai 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 07.08.2019 in M.C.O.P.2062/2016 on the file of the Motor Accident Claims Tribunal/Special Sub-Court, Cuddalore.

For Appellants : Mrs. Ramya V Rao

R1 : No appearance

For R2 : Mrs. C. Bhuvanasundari



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JUDGMENT

The appellants are the claimants in M.C.O.P.2062/2016 on the file of the Motor Accident Claims Tribunal/Special Sub-Court, Cuddalore. They filed the claim petition under Section 166(1) of the Motor Vehicles Act, seeking compensation of Rs.25,00,000/- for the death of one Kaliyaperumal (husband of the first claimant; father of claimants 2 and 3 and son of claimant 4) in a road accident that occurred on 06.02.2016.

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

2.1. On 06.02.2016 Kaliyaperumal (since deceased) was riding his Hero Honda Splendor motorcycle bearing Registration Number TN-31-AC-2432 on Vadalur-Kumbakonam Main Road. When he was nearing Serakuppam village, at about 19.30 hours, he hit a TATA Ace Goods Vehicle bearing Registration Number TN-31-AA-9770, which was parked on the road without any indicator, as a result of which he fell down and sustained injuries all over his body. He was immediately rushed to



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Thanjavur Medical College Hospital. However, he succumbed to injuries on the way to hospital.

3. According to the claimants, the rash and negligent parking of TATA Ace Goods Vehicle bearing Registration Number TN-31-AA-9770, was the cause of the accident and that since the said vehicle was insured with the second respondent, the Reliance General Insurance Company Limited, Chennai, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the owner of the TATA Ace Goods Vehicle 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 TATA Ace Goods Vehicle bearing Registration Number TN-31-AA-9770 and directed the second respondent, insurer of the said motorcycle, to pay compensation of



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Rs.14,62,300/- 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 07.08.2019. The Tribunal also held that the liability of the Insurance Company and the owner of the TATA Ace Goods Vehicle is 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 Mrs. Ramya V Rao, learned counsel appearing for the appellants and Mrs. C. Bhuvanasundari, learned counsel appearing for the second respondent Insurance Company.

8. Mrs. Ramya V Rao, learned counsel appearing for the appellants contended that the deceased was working as a supervisor cum loadman earning a sum of Rs.15,000/- per month. However, the Tribunal fixed the notional monthly income of the deceased only as Rs.6,500/-. She therefore prayed for enhancement of compensation.



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9. Per contra, Mrs. C. Bhuvanasundari, 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 in the present appeal.

10. The age of the deceased was 30 years on the date of accident. According to the claimants, the deceased was working as a supervisor cum loadman earning a sum of Rs.15,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.6,500/-. Considering the year of accident and the age of the deceased, this Court fixes the notional monthly income of the deceased as Rs.15,000/-. 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 future prospects of the deceased. Since the deceased had four dependents, 1/4 is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 17 as per the decision rendered in *Sarla*



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Verma and others vs. Delhi Transport Corporation and another

reported in ***(2009) 6 SCC 121.***

Calculation

Notional Income = Rs.15,000/-

40% Future Prospects = Rs.21,000/-

After 1/4 deduction = Rs.15,750/-

Loss of dependency

= Rs.15750/- x 12 x 17

= Rs.32,13,000/-

In addition to that the claimants are entitled to Rs.1,60,000/- (40,000 x 4), 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:



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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	32,13,000/-
2.	Loss of consortium (Rs.40,000/- x 4)	1,60,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	34,03,000/-

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

11. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.34,03,000/-.
- 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.



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iv. The second respondent, the Reliance General Insurance Company Limited, Chennai, is directed to deposit the enhanced compensation amount of Rs.34,03,000/- (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 to the credit of M.C.O.P.2062/2016 on the file of the Motor Accident Claims Tribunal/Special Sub-Court, Cuddalore, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order.

v. The enhanced compensation amount of Rs.34,03,000/-, is apportioned to the claimants as below:

K. Gayathri (first claimant)	Rs.7,03,000/- with costs and interest
Minor. Riyashini (second claimant)	Rs.12,00,000/-
Minor Riyashan (third claimant)	Rs.12,00,000/-
Dhanakodi (fourth claimant)	Rs.3,00,000/- with costs and interest



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vi. On such deposit being made, the appellants 1 and 4 are at liberty to withdraw their share as per the apportionment made by this Court, with costs and interest, after filing a proper petition for withdrawal. Since the appellants 2 and 3 are minors, their share, shall be deposited in a fixed deposit in any one of the Nationalised banks until they attain majority.

vii. The appellants/claimants are not entitled to claim interest for the period of delay of 68 days in filing this appeal.

27.09.2024

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

To

1. Motor Accident Claims Tribunal/Special Sub-Court, Cuddalore.
2. Reliance General Insurance Company Limited,
Reliance House, 6th Floor,
6, Haddows Road,
Nungambakkam, Chennai 600 006.



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3. The Section Officer, VR Section, Madras High Court, Chennai.
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R.HEMALATHA, J.

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