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C.M.A.No.2654 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2654 of 2022

1.S.Rajeswari

2.Minor S.Gowtham

3.Minor S.Maithereyan

(Minor petitioners 2 and 3 represented by
their mother and natural Guardian,

S.Rajeswari, the first appellant)

4.D.Kantha

5.M.Dhayalan

... Appellants

VS.

1.L.Boopathi

2.The Royal Sundaram General Insurance Co. Ltd.,
No.21, Pattulos Road, Chennai - 600 002.

3. S.Sigamani

4.The Cholamandalam MS General Insurance Co. Ltd.,
Dare House, 2nd Floor, 2, N.S.C.Bose Road,
Chennai - 600 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988 against the Award dated 13.12.2021 in



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M.C.O.P.No.114 of 2017 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Judge, Poonamallee, Tiruvallur.

For Appellants : Mr.K.Varadhakamaraj

For Respondents : R1 - Died

Mr.M.Krishnamoorthy
for R2

R3 - Ex-parte

Ms.R.Sreevidhya
for R4

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.114 of 2017 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Judge, Poonamallee, Tiruvallur. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.20,00,000/- for the death of one Suman, (husband of claimant 1; father of claimants 2 and 3; son of claimants 4 and 5) in a road accident that took place on 30.03.2017.

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



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On 30.03.2017, at about 11:50 hrs, Suman (deceased) was riding a two-wheeler bearing registration No.TN-02-AY-8102 on Chennai - Bangalore Highways and when he was nearing Nazarathpet Police Station, a Tipper Lorry bearing registration No.TN-73-K-9369 hit him from behind, as a result of which, he fell down on the road. At that time, an Eicher Van bearing registration No.TN-20-AQ-2356 belonging to the third respondent ran over Suman (deceased), resulting in his instantaneous death.

3. According to the claimants, the accident took place due to the rash and negligent driving of the drivers of the first and third respondents vehicles viz., the Tipper Lorry and Eicher Van and that since both the vehicles were insured with the Royal Sundaram General Insurance Company Ltd. (the second respondent herein) and the Cholamandalam MS General Insurance Company Ltd. (the fourth respondent herein) respectively, they are jointly and severally liable to pay the compensation to the claimants.

4. The first and third respondents, who are the owners of the



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Tipper Lorry and the Eicher Van respectively, remained absent before the Tribunal and were set *ex-parte*. The second and fourth respondents (Insurance Companies) 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.23,09,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation to the claimants. The Tribunal also held that both the Insurance Companies viz., the Royal Sundaram General Insurance Company Ltd. and the Cholamandalam MS General Insurance Company Ltd., are liable to pay the compensation in the ratio 50:50.

6. Aggrieved over the quantum of compensation awarded by the Tribunal on 13.12.2021, the appellants / claimants have filed the present appeal under Section 173 of the Motor Vehicles Act.

7. Heard Mr.K.Varadhakamaraj, learned counsel appearing for



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the appellants and Mr.M.Krishnamoorthy, learned counsel appearing for the Royal Sundaram General Insurance Company Ltd., the second respondent and Ms.R.Sreevidhya, learned counsel appearing for the Cholamandalam MS General Insurance Company Ltd., the fourth respondent.

8. Mr.K.Varadhakamaraj, learned counsel appearing for the appellants contended that the deceased was actually earning a sum of Rs.2,50,000/- per annum, but the Tribunal had fixed only a sum of Rs.11,000/- per month as notional income of the deceased. Therefore, he prayed for enhancement of compensation amount.

9. Per contra, Mr.M.Krishnamoorthy, learned counsel appearing for the Royal Sundaram General Insurance Company Ltd., the second respondent submitted that the Tribunal has rightly fixed the notional income of the deceased at Rs.11,000/- per month based on the Income Tax Returns of the deceased.

10. It is seen from the records that the deceased was running a



Small Scale Industry in the name and style of M/s.Srivari Engineering Works at Padikuppam. He was doing fabrication work as is seen from the copy of Licence (Ex.P7). The Income Tax Returns for year 2016-17 shows that the Gross Annual Income of the deceased was Rs.1,28,708/-. Based on this, the Tribunal has rightly fixed the notional income of the deceased at Rs.11,000/- per month. Therefore, I do not see any reason to enhance the notional income of the deceased. The Tribunal had also granted 40% towards future prospects as per the decision rendered by the Honourable Supreme Court in the case of *National Insurance Company vs Pranay sethi and others* reported in **2017 (2) TNMAC 601**. The Tribunal had applied proper multiplier (15) as per the decision rendered by the Honourable Supreme Court in the case of *Sarla Verma and others vs. Delhi Transport Corporation and another* reported in **(2009) 6 SCC 121** and awarded compensation as shown in the following tabular column:

<i>Heads</i>	<i>Amount awarded by the Tribunal in Rs.</i>
Income (Rs.11,000/- p.m. Add: Future prospects 40% on Rs.11,000/- = Rs.15,400/- Less: 1/4 of Income (Personal Expenses) (i.e., 1/4 of Rs.15,400 = Rs.3,850/-) = Rs.15,400/- (-) Rs.3,850/- = Rs.11,550/- x 12 = Rs.1,38,600/- p.a. Multiplier of 15 is applied	20,79,000



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<i>Heads</i>	<i>Amount awarded by the Tribunal in Rs.</i>
Therefore, Rs.1,38,600/- x 15	
Loss of Estate	15,000
Loss of Consortium	40,000
Funeral Expenses	15,000
Filial Consortium for one son and one daughter and parental consortium for father and mother (4 members) each @ Rs.40,000/-	1,60,000
Total	23,09,000

11. Since the Tribunal had awarded just compensation, I do not find any reason to interfere with the same. The present appeal therefore fails and stands dismissed. No Costs.

14.08.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
ab

To

- 1.The Motor Accident Claims Tribunal, II Additional District and Sessions Judge, Poonamallee, Tiruvallur.
2. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.
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