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CMA.No.1702 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1702 of 2023

1. S. Sangeetha
2. S. Hemanth Kumar (minor)
3. S. Maha (Minor)
4. V. Logambal

.... Appellants

vs.

1. S. Dinesh
2. Cholamandalam MS General Insurance Company Limited,
Shawallace Building 2nd Floor,
Old No.319, New No.157, Thambu Chetty Street,
Chennai 600 001

...

Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 20.04.2023 in M.C.O.P.1461/2020 on the file of the Chief Judge, Court of Small Causes, Motor Accidents Claims Tribunal, Chennai.

For Appellants : Mrs. Ramya V Rao

R1 : Unclaimed

For R2 : Ms.C. Harini



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J U D G M E N T

The appellants are the claimants in M.C.O.P.1461/2020 on the file of the Chief Judge, Court of Small Causes, Motor Accidents Claims Tribunal, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.60,00,000/- for the death of one Stephen (husband of the first claimant, father for the claimants 2 and 3 and son of the claimant 4) in a road accident that occurred on 01.02.2020.

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

2.1. On 01.02.2020 Stephen (since deceased) was riding his motorcycle bearing Registration Number TN-09-BU-2260 on Arumbakkam 100 feet Road. When he was nearing Vinayagapuram Main Road Signal, a lorry bearing Registration Number TN-48-AV-3228, belonging to the first respondent, which was driven in a rash and negligent manner by its driver suddenly took a 'U' turn, as a result of which, the body of the lorry rammed the motorcycle, causing the instantaneous death



of Stephen.

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3. According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration Number TN-48-AV-3228, was the cause of the accident and that since the said vehicle was insured with the second respondent, the Cholamandalam MS General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the owner of the motorcycle 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 lorry bearing Registration Number TN-48-AV-3228, and directed the second respondent, insurer of the said lorry, to pay compensation of Rs.36,34,714/- to the claimants together with interest at the rate of 7.5% per annum from the date of



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petition till the date of realisation, vide its orders dated 20.04.2023. The

Tribunal also held that the liability of the Insurance Company and the owner of the lorry 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 Mrs. Ramya V Rao, learned counsel appearing for the appellants and Mr.E. Rajadurai, learned counsel appearing for the second respondent Insurance Company.

8. Mrs. Ramya V Rao, learned counsel appearing for the appellants contended that though the deceased was working as an operator for Bhadra International India Private Limited earning a sum of Rs.30,000/- per month, the Tribunal had taken only the net salary of Rs.21,871/- while fixing the loss of income. She therefore prayed for enhancement of compensation.



9. Per contra, Mr. E. Rajadurai, learned counsel appearing 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.

10. A perusal of salary certificate (Ex.P7) shows that the gross salary of the deceased was Rs.26,453/- and this salary certificate pertains to the month of January 2020. The overtime allowance in the salary certificate is mentioned as Rs.2,224/-. Since this pertains to a particular month, this amount cannot be added to the gross salary. After deducting this Overtime allowance of Rs.2,224/-, the gross salary of the deceased is Rs.24,229/-. 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 four dependents, 1/4 should be deducted towards his personal expenses. The deceased was aged 44 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***



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Transport Corporation and another reported in ***(2009) 6 SCC 121.***

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Notional Income = Rs.24,229/-

25% Future Prospects = Rs.30,286/-

After 1/4 deduction = Rs.22,714.50/-

Loss of dependency

= Rs.22,714.50/- x 12 x 14

= Rs.38,16,036/-

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:

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	38,16,036/-
2.	Loss of consortium (Rs.40,000/- x 4)	1,60,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	40,06,036/-



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 from Rs.36,34,714/- to Rs.40,06,036/-.
- 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 second respondent, the Cholamandalam MS General Insurance Company Limited, Chennai, is directed to deposit the enhanced compensation amount of Rs.40,06,036/- (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, in the first instance, to the credit of M.A.C.T.O.P. 1461/2020 on the file of the Chief Judge, Court of Small Causes, Motor Accidents Claims Tribunal, Chennai, within a period of four weeks from the date of



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receipt of a copy of this order.

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v. The enhanced compensation amount of Rs.40,06,036/, is apportioned to the claimants as below:

Sangeetha (first claimant)	Rs.15,06,036/- with costs and interest
Minor. S.Hemanth Kumar (second claimant)	Rs.10,00,000/-
Minor S. Maha (third claimant)	Rs.10,00,000/-
V. Logambal (fourth claimant)	Rs.5,00,000/-

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.

05.09.2024

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



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To

1. The Chief Judge, Court of Small Causes,
Motor Accidents Claims Tribunal, Chennai.
2. Cholamandalam MS General Insurance Company Limited,
Shawallace Building 2nd Floor,
Old No.319, New No.157, Thambu Chetty Street,
Chennai 600 001.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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