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CMA.No.2435 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.2435 of 2022

1.Kodila

2.Vinnarasu

3.Minor Silambarasu

(Minor rep. by his N.F.G. Mother Kodila)

4.Muniyammal

... Appellants

vs.

1.Govindhan M

2.The Manager,
TATA AIG General Insurance Co., Ltd.,
Peninsula Business Park,
Tower - A, 15th Floor, G.K.Marg,
Lower Parel, Mumbai - 400 013.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 25.01.2022 in M.C.O.P.No.209 of 2020 on the file of the Motor Accident Claims Tribunal, Krishnagiri.

For Appellants : Mr.S.P.Yuaraj

For Respondents : Mr.Vinod K



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for R2

R1 - No Appearance - Served

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.209 of 2020 on the file of the Motor Accident Claims Tribunal, Krishnagiri. 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 Ramachandran, (husband of claimant 1, father of claimants 2 and 3 and son of claimant 4) in a road accident that took place on 18.07.2019.

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

On 18.07.2019, Ramachandran (deceased) was walking on the left hand side of the Krishnagiri – Royakottai Road. When he was nearing Uppukuttai Bus Stop, a two wheeler (Hero Splendor Pro) bearing registration No.TN-70-K-9302 hit Ramachandran, as a result of which, he sustained injuries all over his body and died on the spot.

3. According to the claimants, the rash and negligent driving of the driver of the two wheeler bearing Registration Number TN-70-K-9302 was the cause of the accident and since the said vehicle was insured with



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the second respondent, the TATA AIG General Insurance Company Ltd., both the owner and the insurer are jointly and severally liable to pay the compensation to the claimants.

4. The first respondent remained absent before the Tribunal and was set *ex-parte*. The second respondent, TATA AIG General Insurance Company Ltd. resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal, after analyzing the evidence on record, awarded a compensation of Rs.17,08,750/- 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 since the rider of the two wheeler did not have a valid driving licence on the date of the accident, the second respondent is not liable to pay compensation to the claimants. Therefore, the claim petition against the second respondent (the TATA AIG General Insurance Company Ltd.) was dismissed by the Tribunal.

6. Aggrieved over the orders passed by the Tribunal on



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25.01.2022, the appellants / claimants have filed the present appeal under Section 173 of the Motor Vehicles Act.

7. Heard Mr.S.P.Yuaraj, learned counsel appearing for the appellants and Mr.Vinod. K, learned counsel appearing for the second respondent.

8. Mr.S.P.Yuaraj, learned counsel appearing for the appellants contended that the deceased, aged 40 years on the date of the accident, was working as a Master in a sweet stall, earning a sum of Rs.30,000/- per month. But, the Tribunal has fixed the notional income of the deceased only at Rs.9,000/- per month. He also contended that when the rider of the two wheeler was responsible for the accident, the Tribunal had erroneously held that the second respondent, TATA AIG General Insurance Company Ltd. is not liable to pay compensation to the claimants.

9. Per contra Mr.Vinod. K, learned counsel appearing for the second respondent contended that the Tribunal had rightly dismissed the claim petition as against the second respondent and therefore, no



interference is called for by this Court.

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10. The first respondent though was served with notice, did not appear before this Court.

11. It is seen from the records that the deceased was working as a Master in a sweet stall. According to the claimants, the deceased was earning a sum of Rs.30,000/- per month. However, the claimants did not adduce any documentary evidence to substantiate the same.

12. Since the accident took place in the year 2019, the notional income of the deceased is fixed at Rs.15,000/- per month. To this sum, 25% is added towards future prospects of the deceased as per the decision of the Honourable Supreme Court of India in *National Insurance Co. vs Pranay sethi and others* reported in **2017 (2) TNMAC 601**. The age of the deceased on the date of the accident was 40 years as per the Aadhar Card of the deceased (Ex.P9) and therefore, the proper multiplier to be adopted in the instant case is 15 as per the decision rendered by the Honourable Supreme Court in the case of *Sarla Verma and others vs. Delhi*



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

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Calculation :

Notional Income = Rs.15,000/-

25% Future Prospects = Rs.3,750/-

Total = Rs.15,000/- + Rs.3,750/- = Rs.18,750/-

After 1/3rd deduction = Rs.12,500/-

Loss of dependency :

= Rs.12,500/- x 12 x 15

= Rs.22,50,000/-

In addition to that the claimants are entitled to Rs.1,60,000/- (Rs.40,000/- x 4), Rs.15,000/- and Rs.15,000/- towards 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). Thus, the claimants are entitled to a total compensation of Rs.24,40,000/- (Rs.22,50,000/- + Rs.1,60,000/- + Rs.15,000/- + Rs.15,000/- = Rs.24,40,000/-) as shown in the following tabular column:



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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court in Rs.</i>
1.	Loss of dependency	22,50,000
2.	Loss of consortium (Rs.40,000/- x 4)	1,60,000
3.	Funeral expenses	15,000
4.	Loss of Estate	15,000
Total		24,40,000

13. Thus, the compensation awarded by the Tribunal is enhanced from Rs.17,08,750/- to Rs.24,40,000/- which would carry interest at the rate of 7.5% per annum.

14. It is seen from the records that the driver of the two wheeler did not have a valid driving license on the date of the accident. As per the decision of the Honourable Supreme Court in the case of *Shamanna and Another vs. Divisional Manager, The Oriental Insurance Co. Ltd., and Others reported in 2018 (2) TN MAC 151 (SC)*, the Insurance Company has to pay the award amount in the first instance and to recover the same from the owner of the vehicle. Accordingly, the order passed by the Tribunal, exonerating the second respondent, TATA AIG General



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Insurance Company Ltd. from paying the compensation is erroneous.

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15. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.17,08,750/- to Rs.24,40,000/-.
- 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 Judgment and the Registry is directed to draft the decree only after receipt of the Court fee.
- iv. The second respondent, TATA AIG General Insurance Company Ltd. is directed to deposit the enhanced compensation amount i.e., Rs.24,40,000/- (less the amount already deposited, if any) 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.209 of 2020 on the file of the Motor Accident Claims Tribunal, Krishnagiri and recover the same from the first respondent / owner of the vehicle on the same cause of action.



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- v. On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact. The share of the minor appellant 3 is directed to be deposited in any one of the Nationalized Bank till he attains majority.
- vi. It is made clear that the appellants are not entitled for interest for the period of delay in filing this appeal on the amount enhanced by this Court. No costs.

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Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
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R.HEMALATHA, J.
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To

1.The Motor Accident Claims Tribunal, Krishnagiri.

2. The Section Officer, VR Section, Madras High Court, Chennai.

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