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CMA.No.1857 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.1857 of 2023

1. A.Manoharan

2. M.Karthick (minor)

3. M.Sindhu (minor)

(Minor appellants 2 and 3 are rep. by their
father & natural guardian Mr.A.Manoharan)

... Appellants

vs.

1. L.Karthikeyan

2. The Bharti AXA General Insurance Co. Ltd.,
Metro Plaza, 2nd Floor,
No.162, Anna Salai,
Chennai - 600 002.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 21.12.2020 in M.C.O.P.3569/2017 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellants : Mr.R.Kalai Arasan

For R2 : Mrs.A.Salomi

J U D G M E N T

The appellants are the claimants in M.C.O.P.3569/2017 on the file of the Motor Accident Claims Tribunal, Chennai. They filed the claim



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petition under Section 166 of the Motor Vehicles Act, Rule 3 of the M.A.C.T. Rules seeking compensation of Rs.30,00,000/- for the death of one M.Sundari (wife of the first claimant and mother of the claimants 2 and 3) in a road accident that occurred on 06.08.2016.

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

On 06.08.2016, M.Sundari (deceased) was riding her two-wheeler bearing Registration number TN-09-BE-7254 on Thoraipakkam - Adayar road. When she was nearing Seevaram, a speeding lorry bearing Registration number TN-23-Q-6052, hit the two wheeler, resulting in the instantaneous death of M.Sundari.

3. According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration number TN-23-Q-6052 was the cause of the accident and that since the said vehicle was insured with the second respondent, the Bharti AXA General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.



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4. In the Tribunal, the owner of the vehicle remained absent and was set *exparte*. The second respondent 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-23-Q-6052. Since the driver of the lorry did not have a valid driving license on the date of accident, the Tribunal directed the second respondent, Insurance company to pay compensation of Rs.14,29,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, in the first instance and then recover the same from the owner of the lorry (Pay and Recover) vide, its orders dated 21.12.2020.

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



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7. Heard Mr.R.Kalai Arasan, learned counsel appearing for the appellants and Mrs.A.Salomi, learned counsel for the second respondent.

8. Mr.R.Kalai Arasan, learned counsel appearing for the appellants/claimants contended that M.Sundari (deceased), aged 32 years was working as a cashier in a hotel, earning a sum of Rs.12,000/- p.m. However, the Tribunal had fixed a meagre sum of Rs.7,000/- as her notional monthly income. He, therefore prayed for enhancing the compensation.

9. Per contra Mrs.A.Salomi, learned counsel appearing for the second respondent, contended that the Award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

10. According to the claimants, M.Sundari (deceased) aged 32 years, was working as a cashier in a hotel, earning a sum of Rs.12,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed



the notional monthly income of the deceased as Rs.7,000/-. It is pertinent to point out that the accident took place in the year 2016 and in the facts and circumstances, this Court is of the opinion that fixing notional monthly income of the deceased as Rs.12,000/- would meet the ends of justice. 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 there are three dependents, 1/3rd of the deceased's income should be deducted towards her personal expenses. The proper multiplier to be adopted in the instant case is 16 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.12,000/-

after adding 40% Future Prospects = Rs.16,800/-

After 1/3 deduction = Rs.11,200/-

Loss of dependency:

= Rs.11,200/- x 12 x 16

= Rs.21,50,400/-



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In addition to that the claimants are entitled to Rs.1,20,000/- (40,000/-x3), 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.23,00,400/- (21,50,400 + 1,20,000 + 15,000 + 15,000 = 23,00,400) as shown in the following tabular column:

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs. 21,50,400 /-
2.	Loss of consortium (Rs.40,000/- x 3)	Rs.1,20,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.23,00,400/-

11. Thus, the compensation awarded by the Tribunal is enhanced to Rs.23,00,400/- that would carry interest at the rate of 7.5% per annum.



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12. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.23,00,400/-.
- 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 Bharti AXA General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.23,00,400/- (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 / uploading of this order to the credit of M.C.O.P.3569/2017 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai in the first instance and then recover the same from the owner of the lorry (Pay & Recover).



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WEB COPY **v. Apportionment :**

1st claimant / husband	Rs.3,00,400/- (with interest and costs)
2nd claimant / minor son	Rs.10,00,000/-
3rd claimant / minor daughter	Rs.10,00,000/-

vi. The share of the minor appellants 2 and 3 is directed to be deposited in any one of the Nationalised Bank till they attain majority. The first claimants is at liberty to withdraw his share after following due process of law.

01.10.2024

Index : Yes/No
Speaking order / Non speaking order
Neutral Citation : Yes / No
vum

To

- 1.The Motor Accidents Claims Tribunal,
II Small Causes Court, Chennai.
- 2.The Section Officer, VR Section,
Madras High Court, Chennai.



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R.HEMALATHA, J.

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