



C.M.A.No.237 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2024

CORAM

THE HON'BLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.237 of 2023

1.Murugeswari
2.Murugalakshmi
3.Arun Pandiyan

... Appellants

Vs.

1.A.Karuppaiyah

2.TATA AIG General Insurance Company Limited,
2nd floor, Samson Towers,
No.403 L, Pantheon Road,
Egmore, Chennai - 600 008.

3.S.Muthukrishnan

4.The Divisional Manager,
New India Assurance Company Limited,
Sivakasi Divisional Office,
77/78, South Car Street,
Sivakasi - 626 123.

... Respondents

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree dated 21.01.2021 made in M.C.O.P. No.267 of 2016 on the file of the Motor Accidents Claims Tribunal, Perambalur.



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For Appellants : Ms.Sithi Fathima Samt
for Mr.C.Vidhusan

For Respondents : R1 - Served

Mr.J.Michael Visuvasam
for R2

R3 - Left

Mr.M.Krishnamourthy
for R4

JUDGMENT

The appellants are the claimants in M.C.O.P.No.267 of 2016 on the file of the Motor Accidents Claims Tribunal, Perambalur. 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 Durairaj, (husband of claimant 1 and father of claimants 2 and 3) in a road accident that took place on 21.08.2015.

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

On 21.08.2015, at about 05.30 hrs, Durairaj (deceased) was travelling in a Hyundai Santro Car bearing registration No.TN 07 AH 0438 with his wife (Murugeswari) and other relatives on Chennai - Trichy (NH - 45). A



Swaraj Mazda Tractor bearing registration No.TN 46 Q 2340 was going ahead of them near Perambalur. The driver of the tractor drove the tractor rashly and negligently and applied sudden brake without giving proper signal, as a result of which Durairaj (deceased), the driver of the car, rear ended the tractor and sustained multiple injuries, resulting in his instantaneous death.

3. According to the claimants, the accident took place due to the rash and negligent driving of the driver of the tractor and that since the said vehicle was insured with the TATA AIG General Insurance Company Limited, both the owner and the Insurance Company are jointly and severally liable to pay compensation to them.

4. In the Tribunal, the owner of the car and owner of the tractor remained absent 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.



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5. The Tribunal, after analysing the evidence on record, fixed the negligence on the part of the driver of the Tractor and awarded a sum of Rs.9,80,000/- towards compensation 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 the liability of the owner of the Tractor and the Insurance Company, namely, TATA AIG General Insurance Company Limited, is joint and several.

6. Aggrieved over the quantum of compensation awarded by the Tribunal on 21.01.2021, the appellants / claimants have filed the present appeal under Section 173 of the Motor Vehicles Act.

7. Heard Ms.Sithi Fathima Samt, representing Mr.C.Vidhusan, learned counsel appearing for the appellants and Mr.J.Michael Visuvasam, learned counsel appearing for the TATA AIG General Insurance Company Limited, the second respondent and Mr.M.Krishnamourthy, learned counsel appearing for the New India Assurance Company Limited, the fourth respondent.



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8. According to the claimants, the Durairaj (deceased) was running a Hotel earning a sum of Rs.30,000/-. In the absence of income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.7,000/-.

9. Since the accident took place in the year 2015, the notional income of the deceased is fixed at Rs.11,000/- per month. To this sum, 10% is added towards future prospects of the deceased and 1/3 is deducted towards his personal expenses 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 50 years and therefore, the proper multiplier to be adopted in the instant case is 13 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**.

Calculation

Notional Income = Rs.11,000/-

Adding 10% Future Prospects = Rs.12,100/-

After 1/3 deduction = Rs.8,066/-



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Loss of dependency

= Rs.8,066/- x 12 x 13

= Rs.12,58,269/-

In addition to that claimants are entitled for Rs.1,20,000/- (40,000 x 3), 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). Thus, the claimants are entitled to a total compensation of Rs.14,08,296/- (12,58,269 + 1,20,000 + 15,000 + 15,000) as shown in the following tabular column.

S.No.	Heads	Amount granted by this Court in Rs.
1.	Loss of Income	12,58,269
2.	Loss of Consortium (Rs.40,000/- x 3)	1,20,000
3.	Loss of estate	15,000
4.	Funeral Expenses	15,000
	Total	14,08,296

10. In the result,

- The Civil Miscellaneous Appeal is partly allowed.
- The compensation awarded by the Tribunal is enhanced from Rs.9,80,000/- to Rs.14,08,296/-.



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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 TATA AIG General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.14,08,296/- (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.267 of 2016 on the file of the Motor Accidents Claims Tribunal, Perambalur.

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.



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vi. It is made clear that the appellants are not entitled for interest for the period of 91 days of delay in filing this appeal on the amount enhanced by this Court. No costs.

19.08.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

1. The Motor Accidents Claims Tribunal, Perambalur.
2. The Section officer, Record Section, High Court of Madras.



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R. HEMALATHA. J.,

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