IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2227 of 2024

1. S.Sulochana

2. S.Sunitha ... Appellants

vs.

1. S.Ramesh

2. The Oriental Insurance Company Limited,
Third Party Claims Cell,
"Oriental House" 2nd Floor,
Old No.115, New No.216,
Prakasam Salai, Broadway,
Chennai - 600 108. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 25.04.2024 in M.C.O.P. 4664 of 2021 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellants	: Ms.R.Reena
R1	: No appearance
For R2	: Ms.R.Sreevidhya

JUDGMENT

The appellants are the claimants in M.C.O.P. 4664 of 2021 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.45,00,000/- for the death of one Sankar, (the husband of first claimant and father of second claimant) in a road accident that took place on 09.09.2021.

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

On 09.09.2021, Sankar (since deceased) was riding a motorcycle bearing Registration Number TN-20-DZ-6692 on Thekalur – Thiruttani Road. At about 4.30 p.m., a speeding motorcycle bearing Registration Number TN-20-CS-9016 came in the opposite direction and hit his motorcycle, as a result of which, Sankar fell down and sustained injuries all over his body. He was immediately rushed to the Government Hospital, Thiruttani. However, he succumbed to injuries on the same day.

3. According to the claimants, the rash and negligent driving of the driver of the motorcycle bearing Registration Number TN-20-CS-9016 belonging to the first respondent was the cause of the accident and that since the said vehicle was insured with the second respondent, the Oriental Insurance Company Limited, the owner of the motorcycle 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 motorcycle and awarded compensation of Rs.13,36,500/- to the appellants/claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide its orders dated 25.04.2024. The Tribunal also held that the liability of the respondents 1 and 2 are joint and several.

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, 1988.

7. Heard Ms.R.Reena, learned counsel appearing for the appellants and Ms.R.Sreevidhya, learned counsel appearing for the second respondent.

8. Ms.R.Reena, learned counsel appearing for the appellants would contend that the deceased was a daily wager earning a sum of Rs.800/- per day. However, the Tribunal fixed the notional monthly income of the deceased as Rs.12,500/- and therefore, prayed for enhancement of compensation.

9. Per contra Ms.R.Sreevidhya, learned counsel appearing for the second respondent 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

at this stage.

10. In the claim petition, it is contended that the deceased was aged about 53 years and was a daily wager earning a sum of Rs.800/- per day. In the absence of proof of income, the Tribunal fixed the notional monthly income of the deceased as Rs.12,500/-. Considering the age of the victim and the year of the accident, this Court is of the opinion that fixing the notional monthly income of the deceased at Rs.15,000/- 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**,* 10% is added towards future prospects of the deceased. Since there are two dependents, 1/3rd of the deceased's income is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 11 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.15,000/-

10% Future Prospects = Rs.16,500/-

Loss of dependency :

= Rs.16,500/- x 12 x 11 x 2/3

= Rs.14,52,000/-

In addition to that the claimants are entitled to Rs.88,000/- (44,000 x 2), Rs.16,500/-, Rs.16,500/- for Loss of Consortium, Loss of Estate, Funeral Expenses respectively as per the decision in ***National Insurance Co. vs Pranay sethi and others*** (cited supra). The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court under various heads.

S.No.	***Head***	***Amount granted by this court***
1.	Loss of dependency	Rs.14,52,000/-
2.	Loss of consortium (Rs.44,000/- x 2)	Rs.88,000/-
3.	Funeral expenses	Rs.16,500/-
4.	Loss of Estate	Rs.16,500/-
5.	Transportation expenses	Rs.5,500/-
TOTAL		**Rs.15,78,500/-**

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.13,36,500/- to Rs.15,78,500/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

i. The Civil Miscellaneous Appeal is partly allowed. No costs.

ii. The compensation awarded by the Tribunal is enhanced from Rs.13,36,500/- to Rs.15,78,500/-.

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 first respondent and second respondent, the Oriental Insurance Company Limited, Chennai, are directed to deposit the compensation amount i.e., Rs.15,78,500/- (less the amount already deposited) jointly and severally 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. 4664 of 2021 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

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.

04.09.2024

Index : Yes/No
Speaking/Non-speaking order

mtl

To

1.The Motor Accidents Claims Tribunal,
IV Small Causes Court, Chennai.

2. The Oriental Insurance Company Limited,
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"Oriental House" 2nd Floor,
Old No.115, New No.216,
Prakasam Salai, Broadway,
Chennai - 600 108.

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

R.HEMALATHA, J.

mtl

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