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CMA.No.21 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.21 of 2023

1. Saraswathi Bai

2. Minor Vishnu Rao

3. Minor Vishwas Rao

Minor appellants represented by mother and natural guardian 1st
appellant Saraswathi Bai.

4. Rama Bai

.... Appellants

VS.

1. Kendaiiah

2. The Manager,

The Liberty General Insurance Company Limited,
10th Floor, Tower A, Peninsula Business Park,
Ganpat Rao Kadam 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 13.06.2022 in
M.C.O.P.265/2020 on the file of the Motor Accident Claims Tribunal,
Additional District Court, Hosur, Krishnagiri.

For Appellants	: Mr. M. Sivakumar
R1	: Not ready in notice
For R2	: Mrs. C. Harini
	for M/s. M.B. Raghavan



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JUDGMENT

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The appellants are the claimants in M.C.O.P.265/2020 on the file of the Motor Accident Claims Tribunal, Additional District Court, Hosur, Krishnagiri. They filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.75,00,000/- for the death of one Jagannath Rao (husband claimant 1; father of claimants 2 and 3; and son of claimant 4) in a road accident that occurred on 28.09.2019.

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

2.1. On 28.09.2019 Jagannath Rao (since deceased) was riding his unregistered motorcycle on Kolakondahalli-Jawalagiri Road and at about 12.30 hours, a speeding motorcycle bearing Registration Number KA 42 EB 0690 hit the two wheeler driven by Jagannath Rao resulting in his instantaneous death.

3. According to the claimants, the rash and negligent driving of



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the driver of the motorcycle bearing Registration Number KA 42 EB 0690, was the cause of the accident and that since the said motorcycle was insured with the second respondent, the Liberty General Insurance Company Limited, Mumbai, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the owner of the offending 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 rider of the motorcycle bearing Registration Number KA 42 EB 0690 and on the deceased in the ratio 80:20 and directed the second respondent, insurer of the said motorcycle, to pay compensation of Rs.12,90,000/- (80% on the total compensation of Rs.16,12,500/-) to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The Tribunal also held that the liability of the Insurance Company and the



owner of the motorcycle is joint and several.

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6. Aggrieved over the quantum of compensation awarded by the Tribunal and also challenging the contributory negligence fastened on the part of the deceased, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mr.M. Sivakumar, learned counsel appearing for the appellants and Mrs.C. Harini, learned counsel appearing for the second respondent Insurance Company.

8. Mr.M. Sivakumar, learned counsel appearing for the appellants contended that when the Tribunal had come to a conclusion that the rider of the motorcycle bearing Registration Number KA 42 EB 0690 was responsible for the accident, was wrong in fastening 20% contributory negligence on the part of the deceased. He also contended that the Tribunal has not awarded just compensation to the claimants.

9. Per contra, Mrs. C. Harini, learned counsel appearing for the



second respondent/Insurance Company contended that the Tribunal, after properly appreciating the evidence on record, had fastened contributory negligence on the part of the deceased to an extent of 20% and awarded just compensation and therefore, the same need not be disturbed in the present appeal.

Negligence

10. The accident, in the instant case, took place on Kolakondahalli-Jawalagiri Road and the deceased was riding an unregistered motorcycle without wearing helmet. The manner of the accident shows that the deceased also contributed to the accident to some extent. In the circumstances, the negligence on the part of the rider of the two wheeler and on the deceased is fixed as 90:10.

Quantum

10.1. According to the claimants, the deceased was aged 41 years and was working in a private concern earning a sum of Rs.25,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.9,000/-. Considering the year of accident and the age of the deceased, this Court fixes the



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notional monthly income of the deceased as Rs.16,000/-. 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 is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 14 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.16,000/-

25% Future Prospects = Rs.20,000/-

After 1/4 deduction = Rs.15,000/-

Loss of dependency

= Rs.15,000/- x 12 x 14

= Rs.25,20,000/-

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).



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10.2. 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	25,20,000/-
2.	Loss of consortium (Rs.40,000/- x 4)	1,60,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	27,10,000/-
	Less: 10% contributory negligence	2,71,000/-
	Compensation amount	24,39,000/-

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 20% contributory negligence fastened on the deceased by the Tribunal is reduced to 10%.
- iii. The compensation awarded by the Tribunal is enhanced to



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Rs.24,39,000/-.

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- iv. 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.
- v. The second respondent, the Liberty General Insurance Company Limited, Mumbai, is directed to deposit the enhanced compensation amount of Rs. 24,39,000/- (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 to the credit of M.C.O.P.265/2020 on the file of the Motor Accident Claims Tribunal, Additional District Court, Hosur, Krishnagiri, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order.
- vi. The enhanced compensation amount of Rs.24,39,000/- is



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apportioned to the claimants as follows:

Saraswathi Bai (first claimant)	Rs.4,39,000/- with costs and interest
Minor Vishnu Rao (second claimant)	Rs.9,00,000/-
Minor Vishwas Rao (third claimant)	Rs.9,00,000/-
Rama Bai (fourth claimant)	Rs.2,00,000/- with costs and interest

vii. On such deposit being made, the claimants 1 and 4 are at liberty to withdraw the same as per the apportionment made by this Court after filing proper petition for withdrawal. Since the claimants 2 and 3 are minors, their share may be deposited in anyone of the nationalised banks until they attain majority.

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

To

9/11

<https://www.mhc.tn.gov.in/judis>



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1. Motor Accident Claims Tribunal,
Additional District Court, Hosur, Krishnagiri
2. The Manager,
The Liberty General Insurance Company Limited,
10th Floor, Tower A, Peninsula Business Park,
Ganpat Rao Kadam Marg, Lower Parel,
Mumbai 400 013.
3. The Section Officer, VR Section, Madras High Court, Chennai.

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R.HEMALATHA, J.

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