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CMA.No.3310 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.3310 of 2021

1. Athiparasakthi

2. C.Logu

... Appellants

vs.

1. S.Mohan

2. New India Assurance Company Limited,
LIC Building, 6th Floor,
N.S.C. Bose Road,
Chennai - 600 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 21.01.2021 in M.C.O.P. 4401 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Small Causes Court, Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For R2 : Ms.R.Sreevidhya

R1 : No appearance



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J U D G M E N T

The appellants are the claimants in M.C.O.P. 4401 of 2018 on the file of the Motor Accident Claims Tribunal, Small Causes Court, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.50,00,000/- for the death of their son Prathap in a road accident that took place on 08.06.2018.

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

On 08.06.2018, Prathap (since deceased) was riding a two wheeler bearing Registration Number TN-06-U-9532 on Vathalagundu Bypass Road and at about 14.00 hours, a speeding lorry bearing Registration Number TN-28-AS-9889 belonging to the first respondent came on the opposite direction and hit the two wheeler resulting in his instantaneous death.

3. According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration Number TN-28-AS-9889 was the cause of the accident and that since the said vehicle was insured with



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the second respondent, the New India Assurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the owner of the lorry remained absent and was set *ex parte*. 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 and awarded compensation of Rs.16,22,000/- 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 21.01.2021.

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.



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7. Heard Mr.K.Varadha Kamaraj, learned counsel appearing for the appellants and Ms.R.Sreevidhya, learned counsel appearing for the second respondent.

8. Mr.K.Varadha Kamaraj, learned counsel appearing for the appellants would contend that the deceased was working in a hotel earning a sum of Rs.20,000/- per month. However, the Tribunal fixed the notional monthly income of the deceased only as Rs.10,000/-, which, according to him, is very meagre. He therefore, prayed for enhancement of the notional income of the deceased.

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 22 years and was working in a hotel earning a sum of Rs.20,000/- per month. In the absence of income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.10,000/-. Considering the age of the victim and the year of the accident, this Court is of the opinion that fixing 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**, 40% is added towards future prospects of the deceased. The deceased died as a bachelor and hence, 50% is deducted towards his personal expenses. The deceased was aged 22 years on the date of the accident and the proper multiplier to be adopted in the instant case is 18 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/-

40% Future Prospects = Rs.21,000/-

After 1/2 deduction = Rs.10,500/-



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$$= \text{Rs.}10,500/- \times 12 \times 18$$

$$= \text{Rs.}22,68,000/-$$

In addition to that the claimants are entitled to Rs.80,000/- (40,000 x 2), 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.23,78,000/- (22,68,000 + 80,000 + 15,000 + 15,000= 23,78,000) 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.22,68,000/-
2.	Loss of consortium (Rs.40,000/- x 2)	Rs.80,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.23,78,000/-



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11. Thus, the compensation awarded by the Tribunal is enhanced from Rs.16,22,000/- to Rs.23,78,000/- which would carry interest at the rate of 7.5% per annum.

12. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.16,22,000/- to Rs.23,78,000/-.
- 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 order and the Registry is directed to draft the decree only after receipt of the Court fee.
- i. The second respondent, the New India Assurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.23,78,000/- (less the amount already deposited) together



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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. 4401 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Small Causes Court, Chennai.

- ii. 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.

09.09.2024

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



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To

- 1.The Motor Accidents Claims Tribunal,
Special Sub Court No.2, Small Causes Court, Chennai.
2. New India Assurance Company Limited,
LIC Building, 6th Floor,
N.S.C. Bose Road,
Chennai - 600 001.
- 3.The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

mtl

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