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CMA.No.2289 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.2289 of 2023

1. Maragathamani
2. Lenin

... Appellants

VS.

1. Elangovan
2. ICICI Lombard General Insurance Co. Ltd.,
No.140, Chottabhai Centre,
2nd & 3rd Floor,
Nungambakkam,
Chennai - 600 034.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 20.02.2023 in M.A.C.T.O.P.5566/2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

For Appellants : Mr.S.Thambi

For R2 : Mrs.R.Sreevidhya

J U D G M E N T

The appellants are the claimants in M.A.C.T.O.P.5566/2015 on the file of the Motor Accident Claims Tribunal, Chennai. They filed the



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claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.25,00,000/- for the death of their son Livingston in a road accident which happened on 21.01.2010.

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

On 21.01.2010, Livingston (deceased) was riding his two-wheeler bearing Registration number TN-09-Z-7349 on Maduravoyal - Tambaram by pass road. When he was nearing Sovur, Thandalam, a Tata Ace bearing Registration No.TN-22-BX-2517 had been parked by its driver on the road without indicator light and therefore Livingston (deceased) rear ended the said vehicle and died on the spot.

3. According to the claimants, the negligence of parking of the Tata Ace bearing Registration number No.TN-22-BX-2517 on the road was the cause of the accident and that since the said vehicle was insured with the second respondent, the ICICI Lombard 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 first respondent, 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, awarded a compensation of Rs.11,68,400/- 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 20.02.2023.

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

7. Heard Mr.S.Thambi, learned counsel appearing for the appellants and Mrs.R.Sreevidhya, learned counsel for the second respondent.



8. Mr.S.Thambi, learned counsel appearing for the appellants

contended that the deceased was a driver by profession, aged about 22 years on the date of accident. However, the Tribunal had fixed a meagre sum of Rs.7,000/- as his monthly notional income. He therefore prayed for enhancing the notional income of the deceased.

9. Per contra Mrs.R.Sreevidhya, learned counsel appearing for

the second respondent, contended that the Award passed by the Tribunal is based on 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. In order to substantiate that the deceased was a driver by

profession, the claimants had filed the driving licence of the deceased (Ex.P5). The licence was issued to the deceased for driving a light motor vehicle. It is pertinent to point out that the accident took place in the year 2010 and in the facts and circumstances, this Court is of the opinion that fixing notional monthly income of the deceased at Rs.10,000/- 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.10,000/-

after adding 40% Future Prospects = Rs.14,000/-

After 1/2 deduction = Rs.7,000/-

Loss of dependency :

= Rs.7,000/- x 12 x 18

= Rs.15,12,000/-

In addition to that the claimants are entitled to Rs.80,000/- (40,000/- x 2), 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



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claimants are entitled to a total compensation of Rs.16,22,000/-

(15,12,000 + 80,000 + 15,000 + 15,000 = 16,22,000) 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. 15,12,000 /-
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.16,22,000/-

11. The compensation awarded by the Tribunal is enhanced from Rs.11,68,400/- to Rs.16,22,000/- which would carry interest at the rate of 7.5% per annum.

12. In the result,

- The Civil Miscellaneous Appeal is partly allowed. No costs.
- The compensation awarded by the Tribunal is enhanced from Rs.11,68,400/- to Rs.16,22,000/-.
- The appellants / claimants are directed to pay court fee for the



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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 / ICICI Lombard General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.16,22,000/- (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 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.A.C.T.O.P.5566/2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, 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.

20.08.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
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To

- 1.The Motor Accidents Claims Tribunal,
Special Sub Court No.I, 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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