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CMA.No.1731 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1731 of 2024

1. Kamitha Begum
2. Khaja Moideen
3. Nagoor Meeran
4. Syed Ali Fathima

.... Appellants

vs.

1. K. Narasimhan

2. The New India Assurance Company Limited,
Motor Third Party Claims Office,
No.232, Bombay Mutual Building,
6th Floor, N.S.C. Bose Road, Chennai-1.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 31.01.2023 in M.C.O.P.4053/2021 on the file of the Motor Accident Claims Tribunal IV Small Causes Court, Chennai.

For Appellants : Mr. R. Nalliyappan

R1 : Notice dispensed with

For R2 : Mr. K. Thirunavukarasu

JUDGMENT



CMA.No.1731 of 2024

WEB COPY

The appellants are the claimants in M.C.O.P.4053/2021 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 and Rule 3 of the M.A.C.T. Rules, seeking compensation of Rs.24,00,000/- for the death of one Abdul Kadhar (husband of the first claimant and father of claimants 2 to 4) in a road accident that occurred on 09.09.2021.

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

2.1. On 09.09.2021 Abdul Kadhar (since deceased) was standing with his fish cart along GST Road and at about 14.15 hours, a speeding lorry bearing Registration number TN-03-Z-0799 hit him 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-03-Z-0799, was the cause of the accident and that since the said lorry was insured with the



CMA.No.1731 of 2024

second respondent, the New India Assurance Company Limited, Chennai, 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 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 lorry bearing Registration number TN-03-Z-0799, and directed the second respondent, insurer of the said lorry, to pay compensation of Rs.7,09,500/- 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 lorry is joint and several.

6. Aggrieved over the quantum of compensation awarded by the



CMA.No.1731 of 2024

Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mr. R. Nalliyappan, learned counsel appearing for the appellants and Mr.K. Thirunavukarasu, learned counsel appearing for the second respondent Insurance Company.

8. Mr. R. Nalliyappan, learned counsel appearing for the appellants contended that the deceased was doing business in textiles earning a sum of Rs.20,000/- per month. However, the Tribunal fixed the notional monthly income of the deceased only as Rs.11,000/-. He therefore prayed for enhancement of compensation.

9. Per contra, Mr. K. Thirunavukarasu, learned counsel appearing for the second respondent/Insurance Company 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 in the present appeal.

10. The deceased, in the instant case, was aged 67 years and



there are four dependants. According to the claimants, the deceased was doing business in textiles earning a sum of Rs.20,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.11,000/-. Considering the year of accident and the age of the deceased, this Court fixes the notional monthly income of the deceased as Rs.16,000/-. The deceased was aged 67 years on the date of the accident and therefore, he is not entitled to get future prospects as per the decision in *National Insurance Co. vs Pranay sethi and others* reported in **2017 (2) TNMAC 601**. 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 5 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/-

After 1/4 deduction = Rs.12,000/-

Loss of dependency



CMA.No.1731 of 2024

= Rs.12,000/- x 12 x 5

= Rs.7,20,000/-

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In addition to that the claimants are entitled to Rs.1,76,000/- (44,000 x 4), Rs.16,500/- and Rs.16,500/- 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).

10.1. 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	7,20,000/-
2.	Loss of consortium (Rs.44,000/- x 4)	1,76,000/-
3.	Funeral expenses	16,500/-
4.	Loss of Estate	16,500/-
	Total	9,29,000/-

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,



CMA.No.1731 of 2024

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.9,29,000/-.
- 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.
- iv. The second respondent, the New India Assurance Company Limited, Chennai, is directed to deposit the enhanced compensation amount of Rs.9,29,000/- (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.4053/2021 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order. The ratio of apportionment made by the Tribunal shall be kept intact.
- v. On such deposit being made, the appellants are at liberty to



CMA.No.1731 of 2024

withdraw their share as per the apportionment made by the Tribunal
after filing a proper petition for withdrawal.

vi. The appellants/claimants are not entitled to claim interest for the
period of delay of 68 days in filing this appeal.

01.10.2024

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

To

1. Motor Accident Claims Tribunal, IV Small Causes Court, Chennai
2. The New India Assurance Company Limited,
Motor Third Party Claims Office,
No.232, Bombay Mutual Building,
6th Floor, N.S.C. Bose Road, Chennai-1.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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CMA.No.1731 of 2024

R.HEMALATHA, J.

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C.M.A.No.1731 of 2024

01.10.2024