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CMA.No.2483 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.2483 of 2024

1. Kathar Bathu
2. Mohammed Dhanveer
3. Mohammed Jinna
4. Parveen banu

... Appellants

VS.

1. Rukmani
2. M/s.New India Assurance Company Ltd.,
No.184, Coimbatore Main Road,
Dasampalayam, Metupalayam,
Tamil Nadu - 641 301.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 20.06.2024 in M.C.O.P.155/2023 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Mettupalayam, Coimbatore.

For Appellants : Mr.M.Sivakumar
For R2 : Mr.J.Chandran

J U D G M E N T

The appellants are the claimants in M.C.O.P.155/2023 on the file of the Motor Accident Claims Tribunal, Mettupalayam. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking



CMA.No.2483 of 2024

compensation of Rs.49,00,000/- for the death of one Syed Ali, (husband of the first claimant and father of the claimants 2 to 4) in a road accident which happened on 29.06.2023.

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

On 29.06.2023, Syed Ali (deceased) was riding a two-wheeler bearing Registration number TN 42Q 0382 on Periyaputhur - Kaaramadai road. When he was nearing Senni veerampalayam, a speeding car bearing Registration number TN 37 BT 1746, hit the two wheeler, resulting in the instantaneous death of Syed Ali.

3. According to the claimants, the rash and negligent driving of the driver of the Car bearing registration number TN 37 BT 1746 was the cause of the accident and that since the said Car was insured with 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 vehicle remained absent and was set *exparte*. The second respondent resisted the claim petition on all



CMA.No.2483 of 2024

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 Car and directed the second respondent, the New India Assurance Company Limited to pay compensation of Rs.15,70,250/- together with interest at the rate of 5.5% per annum from the date of petition till the date of realisation, vide its orders dated 20.06.2024. The Tribunal also held that the liability of the owner of the Car and the insurer is 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.

7. Heard Mr.M.Sivakumar, learned counsel appearing for the appellants and Mr.J.Chandran, learned counsel for the second respondent.

8. Mr.M.Sivakumar, learned counsel appearing for the appellants contended that the deceased, aged 54 years, was owning a tea shop, earning a sum of Rs.30,000/- per month. However, the Tribunal had



fixed a very meagre sum of Rs.12,500/-, as his monthly notional income.

He further contended that the Tribunal had awarded interest only at the rate of 5.5% per annum. He, therefore prayed for enhancement of compensation and the interest rate.

9. Per contra Mr.J.Chandran, 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. According to the claimants, Syed Ali (deceased) was a tea shop owner, earning a sum of Rs.30,000/- per month. In the absence of income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.12,500/-. It is pertinent to point out that the accident took place in the year 2023 and the deceased was aged 54 years. In the facts and circumstances, this Court is of the opinion that fixing notional monthly income of the deceased as Rs.16,000/- 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 four dependents, 1/4th 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.16,000/-

after adding 10% Future Prospects = Rs.17,600/-

After 1/4 deduction = Rs.13,200/-

Loss of dependency :

= Rs.13,200/- x 12 x 11

= Rs.17,42,400/-

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). Thus, the claimants are entitled to a total compensation of Rs.19,51,400/- (17,42,400 + 1,76,000 + 16,500 + 16,500 = 19,51,400) as shown in the following tabular column:



CMA.No.2483 of 2024

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs.17,42,400 /-
2.	Loss of consortium (Rs.44,000/- x 4)	Rs.1,76,000/-
3.	Funeral expenses	Rs.16,500/-
4.	Loss of Estate	Rs.16,500/-
Total		Rs.19,51,400/-

11. The compensation awarded by the Tribunal is enhanced to Rs.19,51,400/- 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.15,70,250/- to Rs.19,51,400/-.
- 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 liability of the first respondent (owner) and the second respondent (the New India Assurance Company Limited) is joint and several and the second respondent is directed to deposit the



CMA.No.2483 of 2024

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enhanced compensation amount i.e., Rs.19,51,400/- (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 to the credit of M.C.O.P.155/2023 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Mettupalayam, Coimbatore.

- v. On such deposit being made, the 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.

13.09.2024

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

R.HEMALATHA, J.

vum

To

- 1.The Motor Accidents Claims Tribunal,
Special Sub Court, Mettupalayam, Coimbatore.
- 2.The Section Officer, VR Section,
Madras High Court, Chennai.



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CMA.No.2483 of 2024

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