



CMA.No.2615 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.2615 of 2024

1. Parameswari
2. Mariyayi
3. Rethinam

... Appellants

vs.

1. Rengasamy
2. M/s.National Insurance Company Limited,
Rep. by its Divisional Office-I,
L.R.N.Complex, Salem - 7.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 01.02.2024 in M.C.O.P.279/2023 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.S.P.Yuvaraj
For R2 : Mr.J.Chandran

J U D G M E N T

The appellants are the claimants in M.C.O.P.279/2023 on the file of the Motor Accident Claims Tribunal, Salem. They filed the claim petition under Section 166 of the Motor Vehicles Act seeking



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compensation of Rs.70,00,000/- for the death of one Senthilkumar (husband of the first claimant and son of the claimants 2 and 3) in a road accident that occurred on 13.10.2022.

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

On 13.10.2022, Senthilkumar (deceased) was riding a two-wheeler bearing Registration number TN-42-AZ-2404 on Kangeyam - Coimbatore main road. When he was nearing Goundampalayam, a speeding goods lorry bearing Registration number TN-48-BZ-6419, hit the two wheeler, as a result of which, Senthilkumar fell down and sustained injuries all over his body. He was immediately rushed to Government Hospital, Kangeyam from where he was referred to Ganga Hospital, Coimbatore. However, he succumbed to injuries on 20.10.2022.

3. According to the claimants, the rash and negligent driving of the driver of the goods lorry bearing Registration number TN-48-BZ-6419 was the cause of the accident and that since the said vehicle was insured with the second respondent, the National Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation



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to them.

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4. In the Tribunal, 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, fastened negligence on the driver of the goods lorry bearing Registration number TN-48-BZ-6419 and directed the second respondent, the National Insurance Company Limited to pay compensation of Rs.15,85,000/- 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 owner of the lorry 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.S.P.Yuvaraj, learned counsel appearing for the



appellants and Mr.J.Chandran, learned counsel for the second respondent.

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8. Mr.S.P.Yuvaraj, learned counsel appearing for the appellants/claimants contended that the deceased, aged 42 years was a worker in a lathe unit, earning a sum of Rs.40,000/- p.m. However, the Tribunal had fixed a meagre sum of Rs.10,000/- including future prospects, as his monthly notional income. He, therefore prayed for enhancing the notional income of the deceased.

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, Senthilkumar (deceased) aged 42 years was working in a lathe unit, earning a sum of Rs.40,000/- p.m. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.10,000/- including future



prospects. It is pertinent to point out that the accident took place in the year 2022 and 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**, 25% is added towards future prospects of the deceased. Since there are three dependents, $1/3^{\text{rd}}$ of the deceased's income should be 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/-

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

After $1/3$ deduction = Rs.13,333/-

Loss of dependency:

= Rs.13,333/- x 12 x 14

= Rs.22,39,944/-



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In addition to that the claimants are entitled to Rs.1,32,000/- (44,000/-x3), Rs.16,500/- and Rs.16,500/- 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). The petitioners are also entitled to a sum of Rs.4,84,449/- towards medical expenses. Thus, the claimants are entitled to a total compensation of Rs.28,89,393/- (22,39,944 + 1,32,000 + 16,500 + 16,500 + 4,84,449 = 28,89,393) 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. 22,39,944 /-
2.	Loss of consortium (Rs.44,000/- x 3)	Rs.1,32,000/-
3.	Funeral expenses	Rs.16,500/-
4.	Loss of Estate	Rs.16,500/-
5.	Medical Expenses	Rs.4,84,449/-
Total		Rs.28,89,393/-

11. Thus, the compensation awarded by the Tribunal is enhanced to Rs.28,89,393/- that would carry interest at the rate of 7.5%



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per annum.

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12. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.28,89,393/-.
- 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 National Insurance Company Limited) is joint and several and the second respondent / the National Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.28,89,393/- (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.C.O.P.279/2023 on the file of the Motor



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Accident Claims Tribunal, Special District Court, Salem.

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- v. On such deposit being made, the appellants, claimants are permitted to withdraw the same with accrued interest and costs, after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.
- vi. The appellants/claimants are not entitled to claim any interest for the period of delay of 68 days in filing this appeal.

26.09.2024

Index : Yes/No

Speaking order / Non speaking order

Neutral Citation : Yes / No

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To

1.The Motor Accidents Claims Tribunal,
Special District Court, Salem.

2.The Section Officer, VR Section,
Madras High Court, Chennai.



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R.HEMALATHA, J.

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