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CMA.No.2713 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2713 of 2024

1. Pushpa
 2. Minor Paviskaa Shri
Represented by Next Friend/Guardian/Mother Pushpa
 3. Eswari
 4. Jayaraman
- Appellants

vs.

1. G. Thiyagarajan
2. M/s. United India Insurance Company Limited
Divisional Office at No.1,
No.104-A, Ranga Building, Peramanur Main Road,
Near Four Roads, Peramanur, Salem 636 007. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 02.01.2024 in M.C.O.P.1007/2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants	: Mr. R. Navaneetha Krishnan
R1	: No appearance
For R2	: Mr. J. Chandran



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JUDGMENT

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The appellants are the claimants in M.C.O.P.1007/2021 on the file of the Motor Accident Claims Tribunal, Salem. They filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.40,00,000/- for the death of one Venugopal (husband of claimant 1; father of claimant 2; and son of claimants 3 and 4) in a road accident that occurred on 04.02.2021.

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

2.1. On 04.02.2021 Venugopal (since deceased) was riding his two wheeler bearing Registration number TN-30-BZ-7293 on Steel Plant Main Road, Salem, and at about 23.00 hours when he was nearing S.Kollapatti, a lorry bearing Registration number KA51-MA-2022, belonging to the first respondent, was parked on the road without any indicator, as a result of which Venugopal hit the lorry and sustained grievous injuries all over his body. He was immediately rushed to Government Hospital, Salem. However, he succumbed to injuries on



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05.02.2021.

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3. According to the claimants, the rash and negligent parking of the lorry bearing Registration number KA51-MA-2022, was the cause of the accident and that since the said lorry was insured with the second respondent, the United India Insurance Company Limited, Salem, 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 driver of the lorry bearing Registration number KA51-MA-2022 and since the driver of the lorry did not have a valid driving license on the date of accident, directed the second respondent Insurance Company to pay compensation of



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Rs.14,95,000/- to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, in the first instance, and then recover the same from the owner of the lorry, under the same cause of action (pay and recover).

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mr. R. Navaneetha Krishnan, learned counsel appearing for the appellants and Mr. J. Chandran, learned counsel appearing for the second respondent Insurance Company.

8. Mr. R. Navaneetha Krishnan, learned counsel appearing for the appellants contended that the deceased was a lorry driver earning a sum of Rs.25,000/- per month. However, the Tribunal fixed the notional monthly income of the deceased as Rs.10,000/- including future prospects. He, therefore, prayed for enhancement of compensation.



9. Per contra, Mr. J. Chandran, 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. A perusal of the records shows that the deceased was aged 37 years and was a driver by profession. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.10,000/- including future prospects. Considering the year of accident and the age of the deceased, this Court fixes the notional monthly income of the deceased as Rs.17,000/-. 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. 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 15 as per the decision rendered in *Sarla Verma and others vs. Delhi Transport Corporation and another* reported in **(2009) 6 SCC 121**.



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Calculation

Notional Income = Rs.17,000/-

40% Future Prospects = Rs.23,800/-

After 1/4 deduction = Rs.17,850/-

Loss of dependency

= Rs.17,850/- x 12 x 15

= Rs.32,13,000/-

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	32,13,000/-
2.	Loss of consortium (Rs.44,000/- x 4)	1,76,000/-
3.	Funeral expenses	16,500/-
4.	Loss of Estate	16,500/-
	Total	34,22,000/-



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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,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.34,22,000/-.
- 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 United India Insurance Company Limited, Salem, is directed to deposit the enhanced compensation amount of Rs.34,22,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date



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of claim petition till the date of deposit, in the first instance, to the credit of M.C.O.P.1007/2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order, and then recover the same from the first respondent, the owner of the lorry, under the same cause of action (pay and recover).

- v. The enhanced compensation amount of Rs.34,22,000/- is apportioned to the claimants as follows:

Pushpa (first claimant)	Rs.12,22,000/- with costs and interest
Minor Paviskaa Shri (second claimant)	Rs.12,00,000/-
Eswari (third claimant)	Rs.7,00,000/- with cost and interest
Jayaraman (fourth claimant)	Rs.3,00,000/- with costs and interest



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vi. On such deposit being made, the claimants 1, 3 and 4 are at liberty to withdraw the same as per the apportionment made by this Court after filing proper petition for withdrawal. Since second claimant is a minor, her share may be deposited in anyone of the nationalised banks until she attains majority.

vii. The claimants are not entitled to claim interest for the period of delay of 102 days in filing this appeal, as per the orders of this Court dated 19.09.2024 in C.M.P. No.19785 of 2024.

14.10.2024

Index : Yes/No

Speaking/Non-speaking order

bga

To

1. Motor Accident Claims Tribunal, Salem.

2. M/s. United India Insurance Company Limited
Divisional Office at No.1,
No.104-A, Ranga Building, Peramanur Main Road,
Near Four Roads, Peramanur, Salem 636 007.

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



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R.HEMALATHA, J.

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