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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2742 of 2024

1.V.J. Vasantha
2. V. Janardhan Babu
3. V.J. Dileep Kumar
4. V.J. Ramya .... Appellants

vs.

1. S. Thiruchelvam

2. Reliance General Insurance Company Limited,
No.06, Reliance House, 6th Floor,
Haddows Road, Chennai 600 006. . .. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 07.11.2023 in M.C.O.P.3485/2020 on the file of the Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

For Appellants	:	Mr. Amar Dineshbhai Pandiya
R1	:	No appearance
For R2	:	Mr.P.Suresh Srinivasan

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JUDGMENT

The appellants are the claimants in M.C.O.P.3485/2020 on the file of the Motor Accident Claims Tribunal, Court of Small Causes, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act and Rule 3 of MACT Rules, seeking compensation of Rs.80,00,000/- for the death of one V.J.Jayanth (son of claimants 1 and 2 and brother of claimants 3 and 4) in a road accident that occurred on 01.11.2020.

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

2.1. On 01.11.2020 Jayanth (since deceased) was riding his two wheeler bearing Registration Number TN 02 BR 4072 on 200 feet Road, Villivakkam, and at about 22.00 hours, a container lorry bearing Registration Number TN 04 AE 4722 hit the two wheeler as a result of which Jayanth fell down and sustained injuries all over his body. He was immediately rushed to the Government K.M.C. Hospital, Chennai.

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However he succumbed to injuries on the next day.

3. According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration Number TN 04 AE 4722 belonging to the first respondent was the cause of the accident and that since the said lorry was insured with the second respondent, the Reliance General Insurance Company Limited, Chennai, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the first respondent, 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 TN 04 AE 4722. Since the offending lorry did not have a Fitness Certificate on the date of accident, the Tribunal, vide its orders dated 07.11.2023, directed the Reliance General Insurance Company Limited to pay compensation of Rs.16,09,400/- to the claimants 1 and 2 together

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with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation in the first instance and then recover the same from the owner of the lorry bearing Registration Number TN 04 AE 4722, under the same cause of action (pay and recover). The claim petition of the claimants 3 and 4 were dismissed by the Tribunal.

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. Amar Dineshbhai Pandiya, learned counsel appearing for the appellants and Mr.P.Suresh Srinivasan, learned counsel appearing for the second respondent Insurance Company.

8. Mr. Amar Dineshbhai Pandiya, learned counsel appearing for the appellants contended that the deceased was working as an AC mechanic in a private concern earning a sum of Rs.25,000/- per month. Though the job offer letter (Ex.P23) and the salary certificate (Ex.P20) of the deceased were filed, the Tribunal had fixed the notional monthly

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income of the deceased only as Rs.10,500/-. He therefore, prayed for enhancement of compensation.

9. Per contra, Mr.P.Suresh Srinivasan, learned counsel appearing for the second respondent/Insurance Company contended that the copy of the Bank Account Statement (Ex.P24) of the deceased clearly shows that the deceased was receiving a sum of Rs.10,500/- per month and therefore, the Tribunal was right in fixing the monthly income of the deceased a Rs.10,500/-.

10. The Tribunal had mainly relied on the bank statement of the deceased (Ex.P24) to hold that the salary of the deceased was Rs.10,500/-. During October 2020, a sum of Rs.10,500/- was credited to the account of Jayanth (deceased) from Cool Point. Based on this alone, it cannot be concluded that the salary of the deceased was Rs.10,500/- per month. It is also pertinent to point out that the claimants did not adduce any other acceptable evidence to show that the deceased was actually receiving a sum of Rs.25,000/- per month. However, the age of the deceased was 26 years on the date of accident and the accident took

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place in the year 2020. It is not disputed that the deceased was an AC Mechanic. In the circumstances, this Court fixes the notional monthly income of the deceased as Rs.18,000/-. 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 died as a bachelor, 1/2 is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 17 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121.***

<u>Calculation</u>

Notional Income = Rs.18,000/-

40% Future Prospects = Rs.25,400/-

After 1/2 deduction = Rs.12,600/-

<u>Loss of dependency</u>

= Rs.12,600/- x 12 x 17

= Rs.25,70,400/-

In addition to that the claimants are entitled to get Rs.1,60,000/- (40,000 x 4), Rs.15,000/- and Rs.15,000/- for 'loss of Consortium', 'loss of Estate'

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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:

S.No.	***Head***	***Amount granted by this court (Rs.)***
1.	Loss of dependency	25,70,400/-
2.	Loss of consortium (Rs.40,000/- x 4)	1,60,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	27,60,400/-

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.27,60,400/-.

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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 Reliance General Insurance Company Limited, Chennai, is directed to deposit the enhanced compensation amount of Rs. 27,60,400/- (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, in the first instance, to the credit of M.C.O.P.3485/2020 on the file of the Motor Accident Claims Tribunal, Court of Small Causes, Chennai, 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 bearing Registration Number TN 04 AE 4722, under the same cause of action (pay and recover). The apportionment made by the Tribunal shall be kept

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intact.

v. On such deposit being made, the claimants are at liberty to withdraw the same as per the apportionment made by this Court after filing proper petition for withdrawal.

vi. The claimants are not entitled to claim interest for the period of delay of 142 days in filing this appeal as per the orders of this Court dated 24.09.2024 in C.M.P. No.19926 of 2024.

21.10.2024

Index : Yes/No
Speaking/Non-speaking order

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To

1. Motor Accident Claims Tribunal, Court of Small Causes, Chennai

2. Reliance General Insurance Company Limited,
   No.06, Reliance House, 6th Floor,
   Haddows Road, Chennai 600 006.

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

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R.HEMALATHA, J.

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