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CMA.No.2348 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2348 of 2023

1.R.Muthukrishnan
2.Gandhmathiammal

... Appellants

vs.

1.D.Rajalakshmi

2.Shriram General Insurance Company Limited,
I Floor, Plot No.5,
Ramachandra Street, Saravana Nagar,
Seevaram, Perungudi,
Chennai - 600 096.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 04.08.2023 in M.C.O.P.No.3360 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Judge No.II, Cuddalore.

For Appellants : Ms.Ramya V.Rao

For R2 : Ms.R.Sreevidhya

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.3360 of 2017 on the file of the Motor Accident Claims Tribunal, Cuddalore. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988



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seeking compensation of Rs.30,00,000/- for the death of their son Karthik in a road accident that took place on 26.06.2017.

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

On 26.06.2017, Karthik (deceased) was riding a Honda Twister motorcycle bearing Registration Number TN-31-AJ-6270 with one Priyadharshini as a pillion rider on Vadalur - Cuddalore Road. When he was nearing Vallalar bus stand, Vadalur, a speeding Heavy Goods Vehicle (Tipper Lorry) bearing Registration Number TN-32-AV-9210 belonging to the first respondent came on the opposite direction and hit the motorcycle resulting in his instantaneous death.

3. According to the claimants, the rash and negligent driving of the driver of the Heavy Goods Vehicle (Tipper Lorry) bearing Registration Number TN-32-AV-9210 was the cause of the accident and that since the said vehicle was insured with the second respondent, the Shriram General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.



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4. In the Tribunal the first respondent remained absent and was set *ex parte*. 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 fixed 90% negligence on the part of the driver of the Heavy Goods Vehicle (Tipper Lorry) and 10% negligence on the part of the deceased as he was not wearing a helmet and awarded a compensation of Rs.11,98,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide its orders dated 04.08.2023. The Tribunal also held that the liability of the first and second respondents are joint and several.

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



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7. Heard Ms.Ramya V.Rao, learned counsel appearing for the appellants and Ms.R.Sreevidhya, learned counsel for the second respondent.

8. In the claim petition, it is contended that the deceased was aged about 22 years and was a student doing second year diploma. The Tribunal fixed the notional monthly income of the deceased as Rs.8,000/-. It is pertinent to point out that the accident took place in the year 2017 and in the facts and circumstances, this Court is of the opinion that fixing notional monthly income of the deceased at Rs.12,000/- 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**, 40% is added towards future prospects of the deceased. The deceased died as a bachelor and hence, 50% is deducted towards his personal expenses. The deceased was aged 22 years on the date of the accident and the proper multiplier to be adopted in the instant case is 18 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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WEB COM Calculation

Notional Income = Rs.12,000/-

40% Future Prospects = Rs.16,800/-

After 1/2 deduction = Rs.8,400/-

Loss of dependency

= Rs.8,400/- x 12 x 18

= Rs.18,14,400/-

In addition to that the claimants are entitled to Rs.80,000/- (40,000 x 2), Rs.15,000/- and Rs.15,000/- 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.19,24,400/- (18,14,400 + 80,000 + 15,000 + 15,000= 19,24,400) 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.18,14,400/-
2.	Loss of consortium (Rs.40,000/- x 2)	Rs.80,000/-
3.	Funeral expenses	Rs.15,000/-



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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
4.	Loss of Estate	Rs.15,000/-
Total		Rs.19,24,400/-

Since the deceased had also contributed to the accident, 10% is reduced from the total award amount and hence, the claimants are entitled to a sum of Rs.17,31,960/- (19,24,400 - 1,92,440 = 17,31,960). This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

9. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.11,98,000/- to Rs.17,31,960/-
- 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 first respondent and the second respondent, the Shriram



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General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.17,31,960/- (less the amount already deposited) jointly and severally 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.No.3360 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Judge No.II, Cuddalore.

- v. On such deposit being made, the appellants / 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.

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



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To
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1.The Motor Accidents Claims Tribunal,
Special District Judge No.II, Cuddalore.

2.Shriram General Insurance Company Limited,
I Floor, Plot No.5,
Ramachandra Street, Saravana Nagar,
Seevaram, Perungudi,
Chennai - 600 096.

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



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R.HEMALATHA, J.
mtl

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