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CMA.No.2281 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2281 of 2023

1. T. Velmurugan

2. R. Chitra

3. E. Sumathi

.... Appellants

VS.

1. A. Sathish

2. Branch Manager

National Insurance Company Limited

BO No.165, Nethaji Road, Manjakuppam,

Cuddalore 607 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 05.07.2023 in M.C.O.P.1570/2021 on the file of the I Additional District and Sessions Court, Motor Accidents Claims Tribunal, Cuddalore.

For Appellants : Mrs. Ramya V Rao

R1 : No appearance

For R2 : Mr. C. Johnson



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JUDGMENT

The appellants are the claimants in M.C.O.P.1570/2021 on the file of the I Additional District and Sessions Court, Motor Accidents Claims Tribunal, Cuddalore. They filed the claim petition under Section 166(1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.30,00,000/- for the death of one Saraswathi (mother of the claimants) in a road accident that took place on 22.09.2021.

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

2.1. On 22.09.2021 Saraswathi (since deceased) was walking along Ulundurpettai-Thiruvennainallur Road. When she was nearing Pandur Mariyamankoil, a Hero Splendor Plus two wheeler bearing Registration Number TN-15-D-1245, came in the opposite direction and hit her, as a result of which she sustained injuries on her body. She was immediately rushed to the Hospital. However, she succumbed to injuries on 02.10.2021.



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3. According to the claimants, the rash and negligent driving of the rider of the two wheeler bearing Registration Number TN-15-D-1245, 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 to them.

4. In the Tribunal the owner of the motorcycle 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 rider of the motorcycle Hero Splendor Plus two wheeler bearing Registration Number TN-15-D-1245, and directed the second respondent, insurer of the said vehicle, to pay compensation of Rs.2,95,000/- to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide its orders dated 05.07.2023. The Tribunal also held that the liability of the



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Insurance Company and the owner of the lorry are joint and several.

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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 Mrs. Ramya V Rao, learned counsel appearing for the appellants and Mr. C. Johnson, learned counsel appearing for the second respondent Insurance Company.

8. Mrs. Ramya V Rao, learned counsel appearing for the appellants contended that the deceased was a daily wager earning a sum of Rs.20,000/- per month. However, the Tribunal had fixed the notional monthly income of the deceased only as Rs.3,000/-, which, according to her, is on the lower side. She therefore, prayed for enhancement of monthly income of the deceased.

9. Per contra, Mr. C. Johnson learned counsel appearing respondent/Insurance Company contended that the Award passed by the



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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.

10. The age of the deceased in the instant case is 70 years and according to the claimants she was working as a labourer earning a sum of Rs.20,000/- per month. However, no income proof was adduced by the claimants. The accident took place in the year 2021. The age of the deceased was 70 years on the date of accident and considering her age, a sum of Rs.9,000/- is fixed as her notional monthly income. She is not entitled to get future prospects as per the decision in ***National Insurance Co. vs Pranay sethi and others*** reported in ***2017 (2) TNMAC 601***. Since the deceased had three dependents, 1/3 should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 5 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.9,000/-

After 1/3 deduction = Rs.6,000/-

Loss of dependency

= Rs.6000/- x 12 x 5

= Rs.3,60,000/-

In addition to that the claimants are entitled to Rs.1,32,000/- (44,000 x 3), 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	3,60,000/-
2.	Loss of consortium (Rs.44,000/- x 3)	1,32,000/-
3.	Funeral expenses	16,500/-
4.	Loss of Estate	16,500/-
	Total	5,25,000/-



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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 from Rs.2,95,000/- to Rs.5,25,000/-.
- 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 The National Insurance Company Limited, cuddalore, is directed to deposit the enhanced compensation amount i.e., Rs.5,25,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum



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from the date of claim petition till the date of deposit. The ratio of apportionment made by the Tribunal shall be kept intact.

- v. On such deposit being made, the appellants/claimants are at liberty to withdraw their share as per the apportionment made by the Tribunal after filing a proper petition for withdrawal.

05.09.2024

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

To

1. The I Additional District and Sessions Court,
Motor Accidents Claims Tribunal, Cuddalore.
2. Branch Manager
National Insurance Company Limited
BO No.165, Nethaji Road, Manjakuppam,
Cuddalore 607 001.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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