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CMA.No.96 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.96 of 2024

Saraswathy

.... Appellant

vs.

1. Senthilkumar

2. M/s. United India Insurance Company Limited,
Represented by its Divisional Office-II (HUB)
104-A, Peramanur Main Road, Salem.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 15.12.2022 in M.C.O.P.1667/2021 on the file of the Motor Accident Claims Tribunal, Special District Court (FAC), Salem.

For Appellant : Mr. S.P. Yuvaraj

R1 : No appearance

For R2 : Mrs. I. Malar



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JUDGMENT

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The appellant is the claimant in M.C.O.P.1667/2021 on the file of the Motor Accident Claims Tribunal, Salem. She filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.60,00,000/- for the death of her son Senthilkumar in a road accident that occurred on 29.07.2021.

2. The brief case of the appellant / claimant is as follows :

2.1. On 29.07.2021 Senthilkumar (since deceased) was riding his motorcycle bearing Registration number TN-39-AL-3216 on Vellakoil-Ayyampalayam road and when he was nearing Kangeyampalayam junction, a speeding Eicher lorry bearing Registration Number TN 42 T 6501, belonging to the first respondent, came in the opposite direction and hit his two wheeler as a result of which Senthilkumar fell down and sustained injuries all over his body. He was immediately rushed to Krishna Speciality Hospital, Erode. However, he succumbed to injuries on 04.11.2021.



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3. According to the claimant, the rash and negligent driving of the driver of the lorry bearing Registration Number TN 42 T 6501, 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 her.

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 TN 42 T 6501 and directed the second respondent Insurance Company to pay compensation of Rs.20,20,837/- to the claimant together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The Tribunal further held that the liability of the owner of the offending vehicle and the insurance company is joint and several.



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

7. Heard Mr. S.P. Yuvaraj, learned counsel appearing for the appellant and Mrs. I. Malar, learned counsel appearing for the second respondent Insurance Company. No representation for the first respondent, the owner of the lorry.

8. Mr. S.P. Yuvaraj, learned counsel appearing for the appellant contended that the deceased was working as a Drip Irrigation Supervisor in M/s. Ever Green Irrigation, Tirupur District, earning a sum of Rs.30,000/- per month. Though the salary certificate of the deceased was marked as Ex.X4, the Tribunal had fixed the notional monthly income of the deceased only as Rs.12,000/-. He, therefore, prayed for enhancement of compensation.

9. Per contra, Mrs.I. Malar, 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. According to the claimant, the deceased was working as a Drip Irrigation Supervisor in M/s. Ever Green Irrigation, Tirupur District, earning a sum of Rs.30,000/- per month. The proprietor of M/s.Ever Green Irrigation, Tirupur District, was examined as P.W.3. However, P.W.3 did not produce relevant records to show that he was paying monthly salary of Rs.30,000/- to Senthilkumar (since deceased). In the circumstances, considering the year of accident and the age of the deceased, this Court fixes the notional monthly income of the deceased as Rs.15,000/-. 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**, 25% 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 14 as per the decision rendered in ***Sarla Verma and others vs.***



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Delhi Transport Corporation and another reported in ***(2009) 6 SCC***

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Calculation

Notional Income = Rs.15,000/-

25% Future Prospects = Rs.18,750/-

After 1/2 deduction = Rs.9,375/-

Loss of dependency

= Rs.9,375/- x 12 x 14

= Rs.15,75,000/-

In addition to that the claimant is entitled to Rs.7,10,837/- towards medical expenses and Rs.44,000/-, 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:



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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	15,75,000/-
2.	Loss of consortium	44,000/-
3.	Funeral expenses	16,500/-
4.	Loss of Estate	16,500/-
5.	Medical expenses	7,10,837/-
	Total	23,62,837/-

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.23,62,837/-.
- iii. The appellant / claimant is 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.



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- iv. The second respondent, the United India Insurance Company Limited, Salem, is directed to deposit the enhanced compensation amount of Rs.23,62,837/- (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, to the credit of M.C.O.P.1667/2021 on the file of the Motor Accident Claims Tribunal, Special District Court (FAC), Salem, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order.
- v. On such deposit being made, the claimant is at liberty to withdraw the same after filing proper petition for withdrawal.
- vi. The claimant is not entitled to claim interest for the period of delay of 85 days in filing this appeal, as per the orders of this Court dated 13.12.2023 in C.M.P. No.22426 of 2023.

14.10.2024

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



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To

1. Motor Accident Claims Tribunal, Salem.
2. M/s. United India Insurance Company Limited,
Represented by its Divisional Office-II (HUB)
104-A, Peramanur Main Road, Salem.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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