IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2543 of 2023

1.Chandra
2.Rajendran ... Appellants

vs.

1.Kumaravel

2.M/s.United India Insurance Company Limited,
Divisional Office,
1st Floor, 104-A, Ranga Building,
Peramanur Main Road,
Salem – 636 007. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 01.07.2023 in M.C.O.P.No.349 of 2022 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

For Appellants : Mr.M.R.Thangavel

For R2 : Mr.D.Bhaskaran

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.349 of 2022 on the file of the Motor Accident Claims Tribunal, Salem. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.50,00,000/- for the death of their son Johnson Rabin in a road accident that took place on 31.12.2021.

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

On 31.12.2021, Johnson Rabin (deceased) was driving his Omni Car bearing Registration Number TN-30-BL-1409 on Dindigul – Karur Main Road. When he was nearing Ponnagoundanur Branch Road, a lorry bearing Registration Number TN-88-Y-9163 was parked on the main road without any indicator or signal and therefore, Johnson Rabin rear ended the lorry resulting in his instantaneous death.

3. According to the claimants, the negligent parking of the lorry on the road was the cause of the accident and that since the said vehicle was insured with the second respondent, the United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

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 negligence on the part of the driver of the lorry bearing Registration Number TN-88-Y-9163 and awarded a compensation of Rs.10,85,000/- 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 01.07.2023. The Tribunal also held that the liability of the owner and the insurer is joint and several.

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

7. Heard Mr.M.R.Thangavel, learned counsel appearing for the appellants and Mr.D.Bhaskaran, learned counsel appearing for the second respondent.

8. Mr.M.R.Thangavel, learned counsel appearing for the appellants contended that the deceased was a driver by profession earning a sum of Rs.20,000/- per month. However, the Tribunal fixed monthly notional income of the deceased as Rs.10,000/- including future prospects. He therefore, prayed for enhancement of compensation.

9. Per contra Mr.D.Bhaskaran, learned counsel appearing for the second respondent, the United India Insurance Company Limited contended that the Award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

10. A perusal of the course completion certificate (Ex.P8) and transfer certificate (Ex.P9) issued by C.S.I. Polytechnic College, Salem, shows that the deceased had completed his Diploma in Automobile Engineering. He was also employed in Pothys Textile Shop, Salem, as a car driver. However, no documentary evidence was adduced by the claimants to show that the deceased was earning a sum of Rs.20,000/- per

month as claimed by them in their claim petition. In the circumstances, this Court is of the opinion that fixing notional monthly income of the deceased at Rs.15,000/- 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 27 years on the date of the accident and 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.***

Calculation

Notional Income = Rs.15,000/-

40% Future Prospects = Rs.21,000/-

After 1/2 deduction = Rs.10,500/-

Loss of dependency

= Rs.10,500/- x 12 x 17

= Rs.21,42,000/-

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.22,52,000/- (21,42,000 + 80,000 + 15,000 + 15,000= 22,52,000) as shown in the following tabular column.

S.No.	***Head***	***Amount granted by this court***
1.	Loss of dependency	Rs.21,42,000/-
2.	Loss of consortium (Rs.40,000/- x 2)	Rs.80,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.22,52,000/-

11. Thus, the compensation awarded by the Tribunal is enhanced from Rs.10,85,000/- to Rs.22,52,000/- which would carry interest at the rate of 7.5% per annum.

12. In the result,

i. The Civil Miscellaneous Appeal is partly allowed. No costs.

ii. The compensation awarded by the Tribunal is enhanced from Rs.10,85,000/- to Rs.22,52,000/-.

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 first respondent and the second respondent, the United India Insurance Company Limited are directed to deposit the enhanced compensation amount i.e., Rs.22,52,000/- (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.349 of 2022 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

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.

19.08.2024

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

To

1.The Motor Accident Claims Tribunal,
Special District Judge, Salem.

2.M/s.United India Insurance Company Limited,
Divisional Office,
1st Floor, 104-A, Ranga Building,
Peramanur Main Road,
Salem – 636 007.

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

R.HEMALATHA, J.

mtl

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