WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.982 of 2024

1.Sudhagar

2.Minor. Bhuvanesh ... Appellants
(Minor represented by his father and next
friend first appellant)

vs.

1.Manikandan

2.The Legal Manager,
ICICI Lombard General Insurance Company Limited,
No.1/D, Chottabai Street,
Opposite to Land Mark Book Stall,
Nungambakkam, Chennai - 6. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 03.08.2022 in M.C.O.P.1376 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.

For Appellants : Ms.A.Subadra

For R2 : Mr.A.Vinothraj

https://www.mhc.tn.gov.in/judis

WEB COPY

J U D G M E N T

The appellants are the claimants in M.C.O.P.1376 of 2017 on the file of the Motor Accident Claims Tribunal, Tiruvannamalai. 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 one Priya @ Chinnapillai (wife of claimant 1 and mother of claimant 2) in a road accident that occurred on 17.10.2017.

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

On 17.10.2017, Priya @ Chinnapillai (since deceased) was travelling as a pillion rider in a two wheeler bearing Registration Number TN-32-D-1694 on Nathamoor - Tirukoilur road and at about 12.15 p.m., a speeding pickup van bearing Registration Number TN-15-2658 came in the opposite direction and hit the two wheeler, as a result of which, Priya @ Chinnapillai died on spot. On the date of accident, Priya was pregnant for twenty weeks.

3. According to the claimants, the rash and negligent driving of the

https://www.mhc.tn.gov.in/judis

WEB COPY

driver of the pickup van bearing Registration Number TN-15-2658 was the cause of the accident and that since the said vehicle was insured with the second respondent, the ICICI Lombard General Insurance Company Limited, the owner of the vehicle and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the owner of the van remained absent and was set *ex parte*. The second respondent, the ICICI Lombard General Insurance Company Limited resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal, vide its orders dated 03.08.2022, fastened negligence on the part of the driver of the pickup van bearing Registration Number TN-15-2658 and further held that the owner of the vehicle and the insurer are jointly and severally liable to pay compensation of Rs.27,40,200/- to the appellants (claimants) together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

6. Aggrieved over the quantum of compensation awarded by the

https://www.mhc.tn.gov.in/judis

WEB COPY

Tribunal, the appellants (claimants) have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Ms.A.Subadra, learned counsel appearing for the appellants and Mr.A.Vinothraj, learned counsel appearing for the second respondent.

8. Ms.A.Subadra, learned counsel appearing for the appellants would contend that the deceased was a tailor by profession earning a sum of Rs.500/- per day. However, the Tribunal fixed the notional monthly income of the deceased only as Rs.12,000/-, which, according to her, is very meagre. She therefore, prayed for enhancement of the notional monthly income of the deceased.

9. Per contra Mr.A.Vinothraj, learned counsel appearing for the second respondent 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 at this stage.

https://www.mhc.tn.gov.in/judis

WEB COPY

10. In the claim petition, it is contended that the deceased was aged about 21 years and was a tailor by profession earning a sum of Rs.500/- per day. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.12,000/-. Considering the age of the victim and the year of the accident, this Court is of the opinion that fixing notional monthly income of the deceased as 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. Since there are two dependents, 1/3rd of the deceased's income should be deducted towards her personal expenses. 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.***

Calculation

Notional Income = Rs.15,000/-

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

After 1/3 deduction = Rs.14,000/-

Loss of dependency

https://www.mhc.tn.gov.in/judis

WEB COPY

= Rs.14,000/- x 12 x 18

= Rs.30,24,000/-

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.33,34,000/- (30,24,000 + 80,000 + 15,000 + 15,000 + 2,00,000 = 33,34,000) as shown in the following tabular column.

S.No.	***Head***	***Amount granted by this court***
1.	Loss of dependency	Rs.30,24,000 /-
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/-
5.	Death of child in mother's womb	Rs.2,00,000/-
TOTAL		**Rs.33,34,000/-**

11. Thus, the compensation awarded by the Tribunal is enhanced

https://www.mhc.tn.gov.in/judis

WEB COPY

to Rs.33,34,000/- 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 to Rs.33,34,000/-.

iii.The appellants / claimants are directed to pay the 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 ICICI Lombard General Insurance Company Limited, Chennai, is directed to deposit the enhanced compensation amount i.e., Rs.33,34,000/- (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 within a period of four weeks from the date of receipt of a copy of this order to the

https://www.mhc.tn.gov.in/judis

WEB COPY

credit of M.C.O.P.1376 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.

v.Apportionment :

The first claimant is at liberty to withdraw his share after following due process of law :

1st claimant / Husband	Rs.16,67,000/- (with interest and costs)
2nd claimant / Son	Rs.16,67,000/-

vi.The share of the minor second claimant is directed to be deposited in any one of the Nationalised Bank till he attains majority.

vii.The appellants / claimants are not entitled to claim any interest for the period of delay of 292 days in filing this appeal.

viii.

23.10.2024

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

https://www.mhc.tn.gov.in/judis

WEB COPY

To

1.The Motor Accidents Claims Tribunal,
Special Sub Court, Tiruvannamalai.

2.The Legal Manager,
ICICI Lombard General Insurance Company Limited,
No.1/D, Chottabai Street,
Opposite to Land Mark Book Stall,
Nungambakkam, Chennai - 6.

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

https://www.mhc.tn.gov.in/judis

WEB COPY

R.HEMALATHA, J.

mtl

C.M.A.No.982 of 2024

https://www.mhc.tn.gov.in/judis

WEB COPY

23.10.2024

https://www.mhc.tn.gov.in/judis