



CMA.No.2802 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2802 of 2023

1.Prema
2.Mala
3.Chetan
4.Munirathana

... Appellants

vs.

1.Venkatesan

2.The New India Assurance Company Limited,
Bommasandara Branch,
KIADB Complex,
Hosur Main Road,
Bommasandara, Industrial Area,
Bangalore – 560 099.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 22.06.2023 in M.C.O.P.121 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Court, Hosur.

For Appellants : Mr.R.Bharath Kumar

R1 : *Ex parte*

For R2 : Ms.R.Rathnathara



CMA.No.2802 of 2023

J U D G M E N T

The appellants are the claimants in M.C.O.P.121 of 2014 on the file of the Motor Accident Claims Tribunal, Hosur. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.25,00,000/- for the death of one Thimmaraj, (husband of the first claimant and father of claimants 2 to 4) in a road accident that took place on 29.11.2012.

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

On 29.11.2012, Thimmaraj (deceased) was riding a TVS 50 motorcycle bearing Registration Number TN-70-7718 on Karnur – Kalukondapalli Road. When he was nearing Basavanakuttai, a tractor bearing Registration Number KA-05-T-2127 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 tractor bearing Registration Number KA-05-T-2127 was the cause of the accident and that since the said vehicle was insured with the second respondent, the New India Assurance Company Limited,



CMA.No.2802 of 2023

Bangalore, the owner of the tractor (first respondent) and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the owner of the tractor remained absent and was set *ex parte*. The second respondent, the 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 tractor and awarded compensation of Rs.10,72,500/- 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, vide its orders dated 22.06.2023.

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.R.Bharath Kumar, learned counsel appearing for



CMA.No.2802 of 2023

the appellants and Ms.R.Rathnathara, learned counsel for the second respondent.

8. Mr.R.Bharath Kumar, learned counsel appearing for the appellants contended that the deceased was a milk vendor earning a sum of Rs.20,000/- per month. However, the Tribunal fixed the notional monthly income of the deceased as Rs.6,000/- and therefore, prayed for enhancement of compensation.

9. Per contra Ms.R.Rathnathara, learned counsel 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.

10. In the claim petition, it is contended that the deceased was aged about 45 years and was a milk vendor earning a sum of Rs.20,000/- per month. The Tribunal fixed the notional monthly income of the deceased as Rs.6,000/-. Considering the age of the victim and the year of



CMA.No.2802 of 2023

the accident, 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**, 25% is added towards future prospects of the deceased. Since there are four dependents, 1/3rd of the deceased's income should be deducted towards his personal expenses. The deceased was aged 47 years on the date of accident and the proper multiplier to be adopted in the instant case is 13 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.12,000/-

25% Future Prospects = Rs.15,000/-

After 1/3 deduction = Rs.10,000/-

Loss of dependency

= Rs.10,000/- x 12 x 13

= Rs.15,60,000/-

In addition to that the claimants are entitled to Rs.1,60,000/- (40,000 x 4),



CMA.No.2802 of 2023

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.17,50,000/- (15,60,000 + 1,60,000 + 15,000 + 15,000= 17,50,000) 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.15,60,000/-
2.	Loss of consortium (Rs.40,000/- x 4)	Rs.1,60,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.17,50,000/-

11. Thus, the compensation awarded by the Tribunal is enhanced from Rs.10,72,500/- to Rs.17,50,000/- which would carry interest at the rate of 7.5% per annum.

12. In the result,



CMA.No.2802 of 2023

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- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.10,72,500/- to Rs.17,50,000/-.
- 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 New India Assurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.17,50,000/- (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 credit of M.C.O.P.121 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Hosur.



CMA.No.2802 of 2023

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.

29.08.2024

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

To

8/10



CMA.No.2802 of 2023

1.The Motor Accidents Claims Tribunal,
Additional District Judge, Hosur.

2.The New India Assurance Company Limited,
Bommasandara Branch,
KIADB Complex,
Hosur Main Road,
Bommasandara, Industrial Area,
Bangalore – 560 099.

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

R.HEMALATHA, J.
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CMA.No.2802 of 2023

C.M.A.No.2802 of 2023

29.08.2024