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CMA.No.1515 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1515 of 2024

1. Mohammed Ashraf Ali
 2. Minor.Ashifa Anjum
 3. Minor.Affra
 4. Minor.Mohammed Abrar
- (Minor appellants 2 to 4 represented
by his next friend Natural guardian
Father Mohammed Ashraf Ali)

... Appellants

vs.

1. Selvam Bus Service,
2/46, Burn and Co road,
Magnasite Mines Post, Salem.
2. National Insurance Company Limited,
Divisional Office, TP HUB,
Saradha College Road,
LRN Colony, Hasthampathy Salem.
2. National Insurance Company Limited,
Divisional Office, TP HUB,
Saradha College Road,
LRN Colony, Hasthampathy Salem.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 13.10.2022 in M.C.O.P.612/2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.



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For Appellants : Mr.S.P.Yuaraj
For R2 : Mr.R.Premchander

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JUDGMENT

The appellants are the claimants in M.C.O.P.612/2021 on the file of the Motor Accident Claims Tribunal, Special District Court, 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 one Farath (wife of the 1st claimant and mother of the claimants 2 to 4) in a road accident that took place on 01.02.2021.

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

On 01.02.2021, Farath (deceased) was travelling as a pillion rider along with her kids in a two wheeler bearing Registration Number TN-30-BD-2256 driven by the 1st appellant and they were proceeding towards Swarnapuri junction, Salem. At about 9.30 p.m., when they were nearing a Textile shop in Five Roads, Salem, a speeding bus bearing Registration Number TN-21-BD-5956 belonging to the first respondent, hit the two wheeler, as a result of which, Farath (deceased) fell down and the rear wheel of the bus ran over her, resulting in her instantaneous death.

3. According to the claimants, the rash and negligent driving of the driver of the bus bearing Registration Number TN-21-BD-5956 was



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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. The Tribunal after analysing the evidence on record, fastened negligence on the part of the driver of the bus bearing Registration number TN-21-BD-5956 and the rider of the two wheeler bearing Registration number TN-30-BD-2256 in the ratio 50:50 and awarded compensation of Rs.11,57,500/- 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 13.10.2022.

5. Aggrieved over the quantum of compensation awarded by the Tribunal and challenging 50% contributory negligence fastened on the part of the rider of the two wheeler, the appellants / claimants have filed the present appeal under Section 173 of the Motor Vehicles Act.

6. Heard Mr.S.P.Yuaraj, learned counsel appearing for the appellants and Mr.R.Premchander, learned counsel appearing for the



second respondent.

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7. Mr.S.P.Yuaraj, learned counsel appearing for the appellants would contend that the deceased was working as a teacher, earning a sum of Rs.35,000/- per month. However, the Tribunal fixed the notional monthly income of the deceased only as Rs.15,000/- and also fixed the age of the deceased as 35 years, though in the postmortem certificate, her age is mentioned as 32 years. He therefore, prayed for enhancement of the notional income of the deceased. It is also his contention that the Tribunal was wrong in fixing contributory negligence on the part of the 1st claimant to the extent 50%.

8. Per contra Mr.R.Premchander, learned counsel appearing for the second respondent contended that the claimants did not adduce any documentary evidence to prove the actual age of the deceased and in the circumstances, the Tribunal fixed the age of the deceased as 35 years. He also 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.



9. It is true that the claimant did not adduce any oral or documentary evidence to show the actual age of the deceased. As per the postmortem certificate (Ex.P2) the deceased age is mentioned as 32 years. This is the sole document which is available to fix the age of the deceased. Therefore, based on the postmortem certificate (Ex.P2), it is concluded that the age of the deceased was 32 years on the date of the accident.

10. As far as the contributory negligence fixed on the part of the rider of the two wheeler is concerned, the deceased was travelling as a pillion rider along with her kids. The rider of the two wheeler (1st claimant) did not have a valid driving licence and took three of his family members as pillion riders risking their lives. Hence, the Tribunal had rightly fastened 50% of contributory negligence on the part of the rider of the two wheeler and the same does not warrant any interference by this Court.

11. According to the claimants, the deceased was working as a teacher, earning a sum of Rs.35,000/- per month. In the absence of income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.15,000/-. Considering the age of the deceased and the year of the



accident, this Court is of the opinion that fixing notional monthly income of the deceased as Rs.16,000/- 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 four dependents, 1/4th of the deceased's income should be deducted towards her personal expenses. The proper multiplier to be adopted in the instant case is 16 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.16,000/-

40% Future Prospects = Rs.22,400/-

After 1/4 deduction = Rs.16,800/-

Loss of dependency

= Rs.16,800/- x 12 x 16

= Rs.32,25,600/-

In addition to that the claimants are entitled to Rs.1,76,000/- (44,000 x 4), 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). Thus, the claimants are entitled to a total compensation of Rs.34,34,600/- (32,25,600 + 1,76,000



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+ 16,500 + 16,500= 34,34,600) as shown in the following tabular column.

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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs.32,25,600/-
2.	Loss of consortium (Rs.44,000/- x 4)	Rs.1,76,000/-
3.	Funeral expenses	Rs.16,500/-
4.	Loss of Estate	Rs.16,500/-
Total		Rs.34,34,600/-
Less 50% of contributory negligence		Rs.17,17,300/-

12. Thus, the compensation awarded by the Tribunal is enhanced from Rs.11,57,500/- to Rs.17,17,300/- which would carry interest at the rate of 7.5% per annum.

13. In the result,

- The Civil Miscellaneous Appeal is partly allowed. No costs.
- The compensation awarded by the Tribunal is enhanced from Rs.11,57,500/- to Rs.17,17,300/-.
- 50% of the contributory negligence fastened on the part of the rider of the two wheeler bearing Registration number TN-30-BD-2256 is upheld.
- The appellants / claimants are directed to pay court fee for the



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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.

- v. The liability of the first respondent (owner) and the second respondent (the National Insurance Company Limited) is joint and several and the second respondent / National Insurance Company Limited is directed to deposit 50% of the enhanced compensation amount i.e., 17,17,300/- (out of total compensation of Rs.34,34,600/-) (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 / uploading of this order to the credit of M.C.O.P.612/2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

vi. Apportionment :

1st claimant / husband	Rs.5,17,300/- (with interest and costs)
claimants 2 to 4 / children	Rs.4,00,000/- each

- viii. The share of the minor appellants (claimants 2 to 4) is directed to be deposited in any one of the Nationalised Bank till they attain



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majority. The 1st claimant is at liberty to withdraw his share after following due process of law.

ix. The appellants / claimants are not entitled to claim any interest for the period of delay of 264 days in filing this appeal.

09.09.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral citation : Yes / No
vum

To

1.The Motor Accidents Claims Tribunal,
Special District Court, Salem.

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

R.HEMALATHA, J.
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