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CMA.No.1477 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.1477 of 2024

1. R.Prabakaran

2. R.P.Jeni Priya

... Appellants

VS.

1. M.Gokulraj

2. N.Rajendran

3. The New India Assurance Co. Ltd.,
Branch Office at M.L.Complex,
1st Floor, 10/11, Church Road,
Dharapuram,
Tiruppur District - 638 656.

4. M.Kalpana

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 25.04.2023 in M.C.O.P.542/2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

For Appellants : Mr.R.Nalliyappan

For R3 : Mr.S.Dhakshinamoorthy



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J U D G M E N T

The appellants are the claimants in M.C.O.P.542/2018 on the file of the Motor Accident Claims Tribunal, Erode. They filed the claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.50,00,000/- for the death of one P.Santhakumari (wife of the first claimant and mother of the second claimant) in a road accident that occurred on 06.02.2018.

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

On 06.02.2018, P.Santhakumari (deceased) was travelling as a pillion rider in a two-wheeler bearing Registration number TN 33 Q 7311 on Karur - Erode main road. When she was nearing Murugan Savadi junction, a speeding van bearing Registration number TN 78 A 3967, hit the two wheeler, as a result of which, P.Santhakumari fell down and sustained injuries all over her body. She was immediately rushed to Government Hospital, Erode. However, she succumbed to injuries on 09.02.2018.

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



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the driver of the van bearing Registration number TN 78 A 3967 was the cause of the accident and that since the said vehicle was insured with the third respondent, the New India Assurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal, the driver and the owner of the vehicle remained absent and were set *exparte*. The third 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, fastened negligence on the driver of the van bearing Registration number TN 78 A 3967 and directed the third respondent, the New India Assurance Company Limited to pay compensation of Rs.16,49,511/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The Tribunal also held that the liability of the owner of the vehicle and the insurer is joint and several.

6. Aggrieved over the quantum of compensation awarded by the



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

7. Heard Mr.R.Nalliyappan, learned counsel appearing for the appellants and Mr.S.Dhakshinamoorthy, learned counsel for the third respondent.

8. Mr.R.Nalliyappan, learned counsel appearing for the appellants/claimants contended that the deceased P.Santhakumari, aged 50 years was employed as a Anganwadi worker in Tamil Nadu Integrated Children Development Project, Erode, earning a sum of Rs.13,390/- per month. However, the Tribunal had fixed a meagre sum of Rs.10,000/- including future prospects, as her monthly notional income. He, therefore prayed for enhancing the notional income of the deceased.

9. Per contra Mr.S.Dhakshinamoorthy, learned counsel appearing for the third respondent, 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



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be disturbed at this stage.

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10. This Court in order to ascertain the income of the deceased, directed the Registry to issue summons to the Child Development Planning Office, Modakurichi Taluk, Erode to produce the Salary Certificate of P.Santhakumari who was working in Anganvadi. Accordingly, Ms.G.Bhuvaneshwari, Child Development Project Officer, Modakkurichi Block, Erode is present before this Court today and she produced the pay certificate of P.Santhakumari for the period from January 2017 - February 2018.

11. A perusal of the pay certificate shows that P.Santhkumari (deceased) was receiving a sum of Rs.13,390/- before her death. Therefore, the same is taken as monthly income of the deceased for the purpose of computing loss of dependency. 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 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 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.13,390/-

after adding 25% Future Prospects = Rs.16,738/-

After 1/3 deduction = Rs.11,158/-

Loss of dependency:

= Rs.11,158/- x 12 x 13

= Rs.17,40,648/-

In addition to that the claimants are entitled to Rs.80,000/- (40,000/-x2), Rs.15,000/- and Rs.15,000/- towards 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). The appellants, claimants are also entitled to a sum of Rs.84,783/- towards medical expenses. Thus, the claimants are entitled to a total compensation of Rs.19,35,431/- (17,40,648 + 80,000 + 15,000 + 15,000 + 84,783 = 19,35,431) 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. 17,40,648 /-
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.	Medical Expenses	Rs.84,783/-
Total		Rs.19,35,431/-

12. Thus, the compensation awarded by the Tribunal is enhanced to Rs.19,35,431/- that would carry interest at the rate of 7.5% per annum.

13. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.19,35,431/-.
- 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 liability of the first respondent (driver), fourth respondent (owner) and the third respondent (the New India Assurance



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Company Limited) is joint and several and the third respondent / the New India Assurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.19,35,431/- (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.542/2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

- v. On such deposit being made, the appellants, claimants are permitted to withdraw the same with accrued interest and costs, after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.
- vi. The appellants/claimants are not entitled to claim any interest for the period of delay of 41 days in filing this appeal.

30.09.2024

Index : Yes/No
Speaking order / Non speaking order
Neutral Citation : Yes / No
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To

8/10



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

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

R.HEMALATHA, J.



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