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CMA.No.2862 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2862 of 2024 and
C.M.P.No.23496 of 2024

The National Insurance Company Limited,
Motor Third Party Cell,
Murugesu Naicker Complex,
First Floor, No.66, Greaves Road,
Chennai - 600 006.

... Appellants

vs.

1. Nithya
2. I.Mohisha Devi (Minor)
Minor Rep. by her Mother and
next friend Nithya
3. Parimala
4. M.Manickam
5. R.Prabhu
Respondents

...

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 31.01.2024 in M.C.O.P.3033/2019 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellant : Mrs.R.Sreevidhya

For R1 to R4 : Mrs.A.Subadra for



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Mrs.M.Malar

J U D G M E N T

Challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal, Court of Small Causes, Chennai in M.C.O.P.No.3033/2019, the present appeal is filed by the appellant, the National Insurance Company Limited. The claimants / respondents 1 to 4 filed the claim petition under Section 166 of Motor Vehicles Act and Rule 3 of the Motor Vehicles Rules, seeking compensation of Rs.2,00,00,000/- for the death of one M.Ilayaraja (husband of claimant 1; father of claimant 2; son of claimants 3 and 4) in a road accident that occurred on 29.01.2019.

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

On 29.01.2019, M.Ilayaraja (deceased) was riding a two wheeler bearing Registration number TN 23 CF 7736 on Vellore - Arni road and when he was nearing Adukkamparai, a speeding lorry bearing Registration number KA 01 MD 9619 which was going ahead of him, suddenly turned right hand side without any signal or indicator, as a result of which, M.Ilayaraja (deceased) hit the lorry from behind and sustained



injuries all over his body. He was immediately rushed to hospital.

However, he died on the way to hospital.

3. According to the claimants, the rash and negligent driving of the driver of the lorry was 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. In the Tribunal, the owner of the vehicle remained absent and was set *exparte*. The appellant 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 lorry and awarded compensation of Rs.1,10,33,000/- 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 31.01.2024. The Tribunal also held that the liability of the owner of the lorry and the insurer is joint and several.



6. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant / Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act.

7. Heard Mrs.R.Sreevidhya, learned counsel appearing for the appellant and Mrs.A.Subadra, learned counsel for the respondents 1 to 4.

8. It is seen from the records that the deceased was working as a Naik in Indian Army, earning a sum of Rs.55,609/- (gross salary) per month. The Salary Certificate was marked as Ex.P5. The Tribunal fixed notional monthly income of the deceased as Rs.47,202/- as per pay slip for December 2018 (Ex.P21). To this amount, 50% was added towards future prospects as per the decision in *National Insurance Co. vs Pranay sethi and others* reported in *2017 (2) TNMAC 601*. The Tribunal adopted multiplier '17' as per the decision rendered in *Sarla Verma and others vs. Delhi Transport Corporation and another* reported in *(2009) 6 SCC 121*. However, the Tribunal did not deduct any amount towards income tax.



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Income Tax Slab for the Financial Year 2018 - 2019

Upto Rs.2,50,000	-Nil
Rs.2,50,000/- to Rs.5,00,000/-	-5%
Rs.5,00,000/- - Rs.10,00,000/-	- 20%
Annual Income	- Rs.47,202 X 12 = Rs.5,66,424
Future Prospects 50% added	- <u>Rs.2,83,212/-</u>
	Rs.8,49,636/-
Nil Income Tax	(-) <u>Rs.2,50,000/-</u>
	Rs.5,99,636/-
5% Tax of Rs.2,50,000/-	- Rs.12,500/-
20% Tax of Rs.3,49,636/-	- Rs.69,927/-
<u>Tax</u>	<u>- Rs.82,427/-</u>
Principal amount	- Rs.8,49,636/-
Less Tax	- Rs.82,427/-
	- Rs.7,67,209/-
Annual income of the deceased	- Rs.7,67,209/-

Loss of dependency

$$\text{Rs.7,67,209} \times 17 = 1,30,42,553$$

Since there are four dependants 1/4 is deducted towards his personal expenses.

$$1,30,42,553 \times 3/4 = 97,81,914.75$$

round off to **Rs.97,81,915/-**

In addition to that the claimants are entitled to Rs.1,60,000/- (40,000/-x4),



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). Thus, the claimants are entitled to a total compensation of Rs.99,71,915 (97,81,915 + 1,60,000 + 15,000 + 15,000 = 99,71,915) as shown in the following tabular column:

S.No.	Head	Amount granted by this court
1.	Loss of dependency	Rs.97,81,915/-
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.99,71,915/-

9. Thus, the compensation awarded by the Tribunal is scaled down to Rs.99,71,915/- from Rs.1,10,33,000/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

- The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.
- The compensation awarded by the Tribunal is scaled down to



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Rs.99,71,915/- from Rs.1,10,33,000/-.

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iii. The liability of the first respondent (owner) and the appellant (the National Insurance Company Limited) is joint and several and the appellant / the National Insurance Company Limited is directed to deposit the modified compensation amount i.e., Rs.99,71,915/- (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 realisation, 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.3033/2019 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

iv. On such deposit being made, the 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.

28.10.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
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R.HEMALATHA, J.



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- To
- 1.The Motor Accidents Claims Tribunal,
Chief Judge, Court of Small Causes, Chennai.
 - 2.The Section Officer, VR Section, Madras High Court, Chennai.

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