IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2931 of 2023

1. S.Subagirivasan

2. Nithish Subramanian ... Appellants

vs.

1. K.Suresh

2. United India Insurance Company Limited,
Silingi Building, 4th Floor,
Motor Third Party Claims Hub,
No.132, Greams Road,
Chennai - 600 006. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 06.09.2022 in M.C.O.P. 7602 of 2018 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellants : Ms.M.Abbiraami

For R2 : Ms.R.Rathnathara

JUDGMENT

The appellants are the claimants in M.C.O.P. 7602 of 2018 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.28,00,000/- for the death of one Ganga (wife of the first claimant and mother of second claimant) in a road accident that took place on 02.07.2018.

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

On 02.07.2018, Ganga (since deceased) was riding a two wheeler bearing Registration Number TN-22-CF-3044 on Pallavaram 200 feet Radial Road. When she was nearing Prethvika Mahal, a van bearing Registration Number TN-18-K-0672 came in the opposite direction and hit the two wheeler driven by Ganga (deceased), resulting in her instantaneous death.

3. According to the claimants, the rash and negligent driving of the driver of the van bearing Registration Number TN-18-K-0672 was the cause of the accident and that since the said vehicle was insured with the second respondent, the United India 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 van remained absent and was set *ex parte*. The second 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 part of the driver of the van and awarded compensation of Rs.16,33,000/- 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 06.09.2022.

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 Ms.M.Abbiraami, learned counsel appearing for the

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

8. Ms.M.Abbiraami, learned counsel appearing for the appellants contended that though the deceased was earning a sum of Rs.15,000/- per month as a fashion designer, the Tribunal fixed the notional monthly income of the deceased only as Rs.9,000/-. She therefore, prayed for enhancement of the notional monthly income of the deceased.

9. Per contra Ms.R.Rathnathara, 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.

10. A perusal of the salary certificate (Ex.P8) dated 01.10.2018 issued by the proprietor of Floral Designers and Tailors shows that Ganga

(deceased) was receiving a sum of Rs.15,000/- per month. However, the claimants have not proved Ex.P8 by examining the person who issued the salary certificate. In the absence of income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.9,000/-. 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 at 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 deceased was aged 36 years on the date of accident and the proper multiplier to be adopted in the instant case is 15 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121.***

<u>Calculation</u>

Notional Income = Rs.15,000/-

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

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

Loss of dependency

= Rs.14,000/- x 12 x 15

= Rs.25,20,000/-

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.26,30,000/- (25,20,000 + 80,000 + 15,000 + 15,000= 26,30,000) as shown in the following tabular column.

S.No.	***Head***	***Amount granted by this court***
1.	Loss of dependency	Rs.25,20,000/-
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/-
Total		**Rs.26,30,000/-**

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

from Rs.16,33,000/- to Rs.26,30,000/- 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 from Rs.16,33,000/- to Rs.26,30,000/-.

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.

i. The second respondent, the United India Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.26,30,000/- (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. 7602 of 2018 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

ii. 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.

10.09.2024

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

To

1.The Motor Accidents Claims Tribunal,
II Small Causes Court, Chennai.

2. United India Insurance Company Limited,
Silingi Building, 4th Floor,
Motor Third Party Claims Hub,
No.132, Greams Road,
Chennai - 600 006.

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

R.HEMALATHA, J.

mtl

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