WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.Nos.1417 of 2024 and 453 of 2023

C.M.A.No.1417 of 2024

1. Kumari
2. Minor.Dhilip
3. Minor.Esthar Rajathi

   Minors 2 and 3rd appellants rep. by
   their natural guardian mother Kumari)

4. Lakshmi ... Appellants

vs.

1. N.Gomathi

2. The Divisional Manager,
   National Insurance Co. Ltd.,
   Divisional Office, No.81-D,
   Chetty Street, Opp. to Bus stand,
   Tiruvhengode,
   Namakkal District - 637211.

   Branch office at III floor,
   Anuradha Complex, Bangalore road,
   Krishnagiri - 635 001.

3. Shankar ... Respondents

https://www.mhc.tn.gov.in/judis

WEB COPY

C.M.A.No.453 of 2023

1. Ramya
2. Thulasi
3. Minor.Sathish
4. Minor Jayanthi

   Minor appellants 3 and 4 are rep. by their natural guardian elder sister Ramya

5. Chinnathayammal ... Appellants

vs.

1. N.Gomathi

2. The Divisional Manager,
   National Insurance Co. Ltd.,
   Divisional Office, No.81-D,
   Chetty Street, Opp. to Bus stand,
   Tiruvhengode,
   Namakkal District - 637211.
   Branch office at III floor,
   Anuradha Complex, Bangalore road,
   Krishnagiri - 635 001. ... Respondents

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Award, dated 09.02.2022 in M.C.O.P.1167/2019 and M.C.O.P.1171/2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

in both C.M.As
For Appellants : Mr.S.P.Yuvaraj

For R2 : Mrs.R.Rathna Thara

https://www.mhc.tn.gov.in/judis

WEB COPY

COMMON JUDGMENT

The appellants (Claimants) filed claim petitions under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.50,00,000/- for the death of one Satheesh (husband of the first claimant; father of claimants 2 and 3; son of claimant 4 in M.C.O.P.1167/2019) and Rs.35,00,000/- for the death of one Nagesh (father of claimants 1 to 4 and mother of claimant 5 in M.C.O.P.1171/2019), in a road accident that took place on 21.04.2018.

2. The case of the Claimants in a nutshell is as follows:

On 21.04.2018, Satheesh (deceased) was riding TVS MAX 100 Motor cycle bearing Registration number TN-29-S-1798 with one Nagesh (deceased) as a pillion rider on Hosur - Rayakottai road and at about 11.00 p.m., when they were nearing Udhanapalli, a speeding lorry bearing Registration Number TN-34-T-9738, hit the two wheeler from behind, as a result of which, both Satheesh and Nagesh fell down and sustained injuries. While Nagesh died on spot, Satheesh was rushed to Government Hospital, Hosur. However, he succumbed to injuries on 22.04.2018.

https://www.mhc.tn.gov.in/judis

WEB COPY

3. According to the Claimants, the rash and negligent driving of the driver of the lorry bearing Registration number TN-34-T-9738 was the cause of the accident and that since the owner of the lorry had insured his vehicle with the second respondent, the National Insurance Company Limited, the owner of the lorry 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 lorry bearing Registration number TN-34-T-9738 and the rider of the two wheeler bearing Registration number TN-29-S-1798 in the ratio 90:10 and awarded compensation of Rs.20,44,080 (out of Rs.22,71,200/-) to the legal heirs of Satheesh (deceased) and Rs.14,82,750 (out of Rs.16,47,500) to the legal heirs of Nagesh (deceased), 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 09.02.2022. The Tribunal also held that the liability of the owner of the lorry and the insurer is joint and several.

https://www.mhc.tn.gov.in/judis

WEB COPY

5. Aggrieved over the quantum of compensation and the contributory negligence fastened on the part of both the deceased to the extent of 10% by the Tribunal, the claimants have filed the present appeals under Section 173 of the Motor Vehicles Act, 1988.

6. Heard Mr.S.P.Yuvaraj, learned counsel appearing for the appellants, claimants and Mrs.R.Rathna Thara, learned counsel appearing for the second respondent, National Insurance Company Limited.

7. Mr.S.P.Yuvaraj, learned counsel appearing for the appellants, claimants contended that when the FIR and final report are filed against the driver of the lorry bearing Registration number TN-34-T-9738, the Tribunal was wrong in fastening contributory negligence to the extent of 10% each on the part of Satheesh (deceased) and Nagesh (deceased) and prayed for setting aside the orders passed by the Tribunal. He also prayed for enhancement of the compensation awarded by the Tribunal.

8. Per contra, Mrs.R.Rathna Thara, learned counsel appearing for the second respondent contended that three persons were travelling as

https://www.mhc.tn.gov.in/judis

WEB COPY

pillion riders in the two wheeler and therefore the Tribunal was right in fastening contributory negligence to the extent of 10%. According to her, the Tribunal had awarded just compensation in both the cases and therefore the same need not be disturbed in the present appeals.

9. Negligence:

The Tribunal has fastened 10% contributory negligence each on the part of the rider and the pillion rider of the two wheeler bearing Registration number TN-29-S-1798 on the ground that the rider of the two wheeler drove the vehicle with three persons as pillion riders. The Police registered FIR (Ex.P1) and final report against the the driver of the lorry bearing Registration number TN-34-T-9738. The eyewitness account is also clear as to the rash and negligent driving of the driver of the lorry. Though it is contended by the Insurance Company that three persons were travelling in the motor cycle as pillion riders, the same has not been substantiated by adducing acceptable evidence. In the final report, it is stated that the other two persons who sustained injuries in the very same accident, were pedestrians on the road. It is also pertinent to point out that there is nothing on record to show that either Satheesh (deceased) or

https://www.mhc.tn.gov.in/judis

WEB COPY

Nagesh (deceased) contributed to the accident. The manner of the accident also shows the rash and negligent driving of the driver of the lorry. In the circumstances, fastening 10% of contributory negligence on the part of the rider Satheesh (deceased) and the pillion rider (Nagesh) by the Tribunal, is erroneous and the same is hereby set aside.

10. Quantum:

10.1. C.M.A.1417/2024:

According to the claimants, Satheesh (deceased) aged 23 years was working as a Mason earning a sum of Rs.30,000/- per month. In the absence of income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.9,000/-. It is pertinent to point out that the accident took place in the year 2018. 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 five dependents, 1/4^{rh} of the deceased's income should be deducted

https://www.mhc.tn.gov.in/judis

WEB COPY

towards his personal expenses. The proper multiplier to be adopted in the instant case is 18 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/-

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

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

Loss of dependency :

= Rs.16,800/- x 12 x 18

= Rs.36,28,800/-

In addition to that the claimants are entitled to Rs.2,00,000/- (40,000/-x5), 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.38,58,800 (36,28,800 + 2,00,000 + 15,000 + 15,000 = 38,58,800) as shown in the following tabular column:

https://www.mhc.tn.gov.in/judis

WEB COPY

S.No.	***Head***	***Amount granted by this court***
1.	Loss of dependency	Rs.36,28,800/-
2.	Loss of consortium (Rs.40,000/- x 5)	Rs.2,00,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.38,58,800/-

Thus, the compensation awarded by the Tribunal in M.C.O.P.1167/2019 is enhanced to Rs.38,58,800/- that would carry interest at the rate of 7.5% per annum.

10.2. C.M.A.453/2023:

According to the claimants, Nagesh (deceased) aged 44 years, was a Mason earning a sum of Rs.30,000/- per month. 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 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***, 25% is added towards future prospects of the deceased. Since there are five

https://www.mhc.tn.gov.in/judis

WEB COPY

dependents, 1/4rh of the deceased's income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 14 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/-

after adding 25% Future Prospects = Rs.20,000/-

After 1/4 deduction = Rs.15,000/-

Loss of dependency :

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

= Rs.25,20,000/-

In addition to that the claimants are entitled to Rs.2,00,000/- (40,000/-x5), 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.27,50,000/- (25,20,000 + 2,00,000 + 15,000 + 15,000 = 38,18,800) as shown in the following tabular column:

https://www.mhc.tn.gov.in/judis

WEB COPY

S.No.	***Head***	***Amount granted by this court***
1.	Loss of dependency	Rs.25,20,000 /-
2.	Loss of consortium (Rs.40,000/- x 5)	Rs.2,00,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.27,50,000/-

Thus, the compensation awarded by the Tribunal in M.C.O.P.1171/2019 is enhanced to Rs.27,50,000/- that would carry interest at the rate of 7.5% per annum.

11. In the result,

i. The Civil Miscellaneous Appeals are partly allowed. No costs.

ii. The compensation awarded by the Tribunal in M.C.O.P.1167/2019 is enhanced to Rs.38,58,800/-.

iii. The compensation awarded by the Tribunal in M.C.O.P.1171/2019 is enhanced to Rs.27,50,000/-.

iv. 10% Contributory negligence fastened on the part of Satheesh (deceased) and Nagesh (deceased), is set aside.

v. The appellants / claimants are directed to pay court fee for their respective enhanced compensation amount, if any, within a period

https://www.mhc.tn.gov.in/judis

WEB COPY

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.

vi. The liability of owner of the lorry 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 the entire award amounts i.e. Rs.38,58,800/- and Rs..27,50,000/- (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 / uploading of this order to the credit of M.C.O.P.1167/2019 and M.C.O.P.1171/2019 respectively, on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

vii.Apportionment in C.M.A.No.1417 of 2024 :

first appellant / wife	Rs.10,58,800/- (with interest and costs)
second and third appellants / minor children	Rs.10,00,000/- each
fourth appellant / Mother	Rs.4,00,000/-
third respondent / Father	Rs.4,00,000/-

viii.Apportionment in C.M.A.No.453 of 2023 :

https://www.mhc.tn.gov.in/judis

WEB COPY

claimants 1 and 2 / daughters	Rs.6,00,000/- each
third claimant / minor son	Rs.6,00,000/-
fourth claimant/minor daughter	Rs.6,00,000/-
fifth Claimant /Mother	Rs.3,50,000/- (with interest and costs)

ix. The share of the minor claimants is directed to be deposited in any one of the Nationalised Bank till they attain majority. The other claimants are at liberty to withdraw their respective shares after following due process of law.

x. The appellants, claimants are not entitled to claim any interest for the period of delay of 164 days and 179 days in filing their respective appeals.

14.10.2024

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

To

1.The Motor Accidents Claims Tribunal
Special District Court,
Krishnagiri.
2. The Section Officer, VR Section,
Madras High Court, Chennai.

R.HEMALATHA, J.

vum

https://www.mhc.tn.gov.in/judis

WEB COPY

C.M.A.Nos.1417 of 2024 and 453 of 2023

14.10.2024

https://www.mhc.tn.gov.in/judis