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CMA.No.85 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 10.09.2024**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE R. HEMALATHA**

**C.M.A.No.85 of 2024**

1. T.MuthuMangai

2. V.Barshalia (minor)  
(minor represented by her mother and  
natural guardian T.MuthuMangai first appellant)

3.A.Anandan

4.A.Chiristumani

... Appellants

vs.

1. G.Gothandan

2. L & T General Insurance Company Limited,  
6th Floor, Trade Center,  
Bandra kurla Complex,  
Mumbai - 400 027.

Now merged with  
The Manager,  
HDFC Ergo General Insurance Company Limited,  
RR Towers II, 2nd Floor,  
No.94/95, T.V.K. Industrial Estate,  
Guindy, Chennai - 600 032.

... Respondents



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**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. 6627 of 2016 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellants : Mr.T.G.Ravichandran  
For R2 : Ms.C.Harini  
for M/s.M.B.Gopalan Associates

### **J U D G M E N T**

The appellants are the claimants in M.C.O.P. 6627 of 2016 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.55,00,000/- for the death of one Vijay (the husband of first claimant, father of second claimant and the son of claimants 3 and 4) in a road accident that took place on 30.07.2016.

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

On 30.07.2016, Vijay (since deceased) was riding a two wheeler bearing Registration Number TN-07-CA-4100 near the junction of Rajiv



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Gandhi Road and Corporation Road and at about 02.30 hours, a speeding lorry bearing Registration Number TN-01-H-7407 hit the two wheeler driven by Vijay (deceased), resulting in his instantaneous death.

3. According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration Number TN-01-H-7407 was the cause of the accident and that since the said vehicle was insured with the second respondent, Insurance Company, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the owner of the lorry 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 lorry and awarded compensation of Rs.21,25,800/- 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,



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vide its orders dated 13.10.2022.

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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 Mr.T.G.Ravichandran, learned counsel appearing for the appellants and Ms.C.Harini, learned counsel appearing for the second respondent.

8. Mr.T.G.Ravichandran, learned counsel appearing for the appellants contended that though the deceased was working as a supervisor in a private bar earning a sum of Rs.20,000/- per month as evidenced by the Appointment Order (Ex.P28) and Attendance Register (Ex.P29), the Tribunal fixed the notional monthly income of the deceased only as Rs.9,000/-. He therefore, prayed for enhancement of the notional monthly income of the deceased.



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9. Per contra Ms.C.Harini, 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. In the appointment order (Ex.P28) the proposed salary of the deceased is mentioned as Rs.20,000/- per month. However, the claimants have not proved Ex.P28 by examining the person who issued the appointment order. In the absence of satisfactory 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.14,000/- 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, 1/3rd of the deceased's income should be deducted towards his personal expenses. The



deceased was aged 28 years on the date of accident and the proper multiplier to be adopted in the instant case is 17 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.14,000/-

40% Future Prospects = Rs.19,600/-

After 1/3 deduction = Rs.13,066/-

### Loss of dependency

= Rs.13,066/- x 12 x 17

= Rs.26,65,464/-

In addition to that the claimants are entitled to Rs.1,60,000/- (40,000 x 4), 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.28,55,464/- ( 26,65,464 + 1,60,000



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+ 15,000 + 15,000= 28,55,464) as shown in the following tabular column.

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| <i><b>S.No.</b></i> | <i><b>Head</b></i>                      | <i><b>Amount granted<br/>by this court</b></i> |
|---------------------|-----------------------------------------|------------------------------------------------|
| 1.                  | Loss of dependency                      | Rs.26,65,464/-                                 |
| 2.                  | Loss of consortium<br>(Rs.40,000/- x 4) | Rs.1,60,000/-                                  |
| 3.                  | Funeral expenses                        | Rs.15,000/-                                    |
| 4.                  | Loss of Estate                          | Rs.15,000/-                                    |
| <b>Total</b>        |                                         | <b>Rs.28,55,464/-</b>                          |

11. Thus, the compensation awarded by the Tribunal is enhanced from Rs.21,25,800/- to Rs.28,55,464/- 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.21,25,800/- to Rs.28,55,464/-.



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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 second respondent, Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.28,55,464/- (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. 6627 of 2016 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

**v. Apportionment :**

|                                    |                                            |
|------------------------------------|--------------------------------------------|
| 1st claimant / Wife                | Rs.6,55,464/-<br>(with interest and costs) |
| 2nd claimant / Daughter<br>(Minor) | Rs.15,00,000/-                             |
| 3rd claimant / Mother              | Rs.5,00,000/-                              |
| 4th claimant / Father              | Rs.2,00,000/-                              |



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vi. The compensation amount of the minor claimant viz., V.Barshalia shall be deposited in any one of the Nationalised Bank till she attains majority. The claimants 1, 3 and 4 are at liberty to withdraw their respective shares after following due process of law.

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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.



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**R.HEMALATHA, J.**  
mtl

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