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CMA.No.2856 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2856 of 2023

1.Chamundeeswari

2.Muthubharathi

3.Selvi Gnanamani

4.Vignesh

5.Abishek

... Appellants

vs.

1.Balachandar

2.Manager,

New India Assurance Co. Ltd.,

No.78, Danvantri Building, First Floor,

Keezhaveedhi, Chidambaram – 608 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988 against the Award and decree passed in M.A.C.T.O.P.No.341 of 2019 dated 27.09.2022 on the file of the Court of II Additional District and Sessions Judge (Motor Accidents Claims Tribunal), Chidambaram.



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For Appellants : Mr.A.Muthukumar
For R1 : Mr.C.Kavin Kumar
For R2 : Mr.R.Rajesh

J U D G M E N T

The appellants, are the claimants in M.A.C.T.O.P.No.341 of 2019 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Chidambaram and they filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.40,00,000/- for the death of one Mani (husband of the 1st claimant and father of the claimants 2 to 5) in a road accident that happened on 18.08.2019.

2. The case of the claimants is as follows:

On 18.08.2019, at about 09.00 hours Mani (deceased) was riding his two-wheeler bearing Registration number TN-31-AK-1939 on Kattumannarkoil Main Road. When he was nearing Meiyathur bus stand another two-wheeler bearing Registration number TN-91-6112 hit the two wheeler driven by Mani, as a result of which Mani fell down and



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sustained injuries. He was immediately rushed to Annamalai Raja Muthaiah Medical College Hospital. However, he succumbed to injuries on the same day.

3. According to the claimants, the rash and negligent driving of the driver of the motorcycle bearing Registration number TN-91-6112 belonging to the 1st respondent was the cause of the accident and that since the said vehicle was insured with the 2nd respondent, the New India Assurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. Both the respondents contested the claim petition and the learned II Additional District and Sessions Judge (Motor Accident Claims Tribunal), Chidambaram, after analysing the evidence on record, fixed the notional income of the deceased at Rs.10,000/- per month and awarded a compensation of Rs.16,92,500/- to the claimants together with interest at the rate of 7.5% per annum. Since there was a violation of policy conditions the Tribunal directed the second respondent, the New India Assurance Company Limited to pay the award amount in the first instance



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and then recover the same from the owner of the two-wheeler. 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.

5. Heard Mr.A.Muthukumar, learned counsel appearing for the appellants, Mr.C.Kavin Kumar, learned counsel appearing for the 1st respondent and Mr.R.Rajesh, learned counsel appearing for the second respondent.

6. Mr.A.Muthukumar, learned counsel appearing for the appellants / claimants would contend that the deceased Mani was aged 49 years on the date of the accident and the claimants were depending on his income. According to the learned counsel for the appellants the deceased was an agriculturist earning a sum of Rs.3,00,000/- per annum, but the Tribunal fixed a meagre amount of Rs.10,000/- as monthly income. He therefore prayed for enhancement of compensation.



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7. *Per contra* Mr.C.Kavin Kumar, learned counsel appearing for

the 1st respondent and Mr.R.Rajesh, learned counsel appearing for the second 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 be disturbed at this stage.

8. It is seen from the records that the deceased was an agriculturist. He would have easily earned a sum of Rs.15,000/- per month. Thus the notional monthly income is fixed at Rs.15,000/-. As per the decision of the Hon'ble Supreme Court of India in **National Insurance Co. vs. Pranay Sethi and Others** reported in **2017 (2) TNMAC 601 (SC)**, there will be an addition of 25% towards future prospects. Since there are five dependents, 1/4th of the deceased's income is deducted towards his personal expenses. The deceased was aged 49 years on the date of accident and as per the decision rendered in **Sarla Verma and Others vs. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** the proper multiplier is thirteen (13).

Calculation for Loss of Dependency :



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Monthly notional income fixed = Rs.15,000/-

25% towards future prospects = Rs.3,750/-

= Rs.18,750/-

1/4th towards personal expenses = Rs.4,688/-

Less = Rs.14,062/-

multiplier = 13

Thus, the loss of dependency is 14,062 x 12 x 13

= Rs.21,93,672/-

In addition to that, as per the decision rendered by the Constitution Bench of the Honourable Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others* reported in 2017 (2) TNMAC 601, the claimant is entitled to Rs.2,00,000/- (40,000 x 5), Rs.15,000 and Rs.15,000/- towards Loss of Consortium, Funeral Expenses and Loss of Estate respectively. Thus, the claimants are entitled to a total compensation of Rs.24,23,672/- (21,93,672 + (40,000x5) + 15000 + 15000 = 2423672) 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.21,93,672/-
2.	Loss of consortium (40,000 x 5 dependents)	Rs.2,00,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.24,23,672/-

The above amount is rounded off to Rs.24,23,750/-.

9. Regarding pay and recovery, since the rider of the two wheeler viz., 1st respondent did not possess a valid driving license on the date of the accident the Tribunal directed the 2nd respondent Insurance Company to pay the award amount at the first instance and recover the same from the 1st respondent. The owner of the vehicle did not file any appeal against the order passed by the Tribunal in this regard. Hence, the order of the Tribunal is confirmed.

10. Thus, the compensation awarded by the Tribunal is enhanced from Rs.16,92,500/- to Rs.24,23,750/- which would carry interest at the rate of 7.5% per annum.



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11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.16,92,500/- to Rs.24,23,750/-.

(iii) The appellant / claimant is 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 / The New India Assurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.24,23,750/- (less the amount if any 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.A.C.T.O.P.No.341 of 2019 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Chidambaram and recover the same from the 1st respondent on the same cause of action.

(v) On such deposit being made, the appellants 1 to 5 /



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claimants 1 to 5 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.

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Index : Yes/No

Speaking/Non-speaking order

dsa

To

1. The Motor Accidents Claims Tribunal, II Additional District and Sessions Judge, Chidambaram.
2. The Manager, New India Assurance Co. Ltd., No.78, Danvantri Building, First Floor, Keezhaveedhi, Chidambaram – 608 001.
3. The Section Officer, V.R. Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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