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CMA.No.742 of 20231

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.742 of 2023
and C.M.P.No.20407 of 2024

1. Rajathi

2. T.Mani

... Appellants

VS.

1. M.S.Jyothilal

2. Vishnu

3. The Oriental Insurance Company Limited,
Having its Branch office at Pulimoottil Building,
P.B.No.17, Post Office Junction,
Punalur, Kerala State - 691 305.

4. The Oriental Insurance Company Limited,
Having its Divisional office at No.11,
Parimalam Complex, 2nd Floor,
EVN Road, Erode - 638 011,
Erode Taluk, Erode District.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award, dated 21.04.2022 in M.C.O.P.661/2018 on the file of the Motor Accident Claims Tribunal, Special District Court at Erode.

For Appellants : Mr.Ma.Pa.Thangavel
For R3 & R4 : Mrs.R.Sreevidhya
For R1 and R2 : No appearance

J U D G M E N T



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The appellants are the claimants in M.C.O.P.661/2018 on the file of the Motor Accident Claims Tribunal, Erode. They filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.30,00,000/- for the death of their son Gopi @ Govarthanan in a road accident that occurred on 17.05.2018.

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

On 17.05.2018, Gopi @ Govarthanan (deceased) was travelling as a pillion rider in a two wheeler bearing Registration number TN 37 CW 0916 on Pollachi - Udumalpet road and at about 9.00 a.m., when he was nearing Chinniyampalayam, a speeding car bearing Registration number KL 02 Y 1111, hit the two wheeler, as a result of which, he sustained injuries all over his body. He was immediately rushed to the Government Hospital, Pollachi from where he was referred to Coimbatore Medical College and hospital. However, he succumbed to injuries on 21.05.2018.

3. According to the claimants, the rash and negligent driving of the driver of the car bearing Registration number KL 02 Y 1111 was the



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cause of the accident and that since the said vehicle was insured with the Oriental Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal, the driver and the owner of the vehicle remained absent and were set *exparte*. The 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 60% negligence on the part of the pillion rider of the two wheeler and 40% negligence on the part of the driver of the car and awarded compensation of Rs.7,89,760/- (60% of total compensation of Rs.19,74,400/-) 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 21.04.2022. The Tribunal also held that the liability of the owner of the car and the third respondent, insurer is joint and several. The Tribunal dismissed the claim petition as against the fourth respondent.



6. Questioning 60% contributory negligence fastened on the part of the deceased (pillion of the two wheeler), the appellants / claimants have filed the present appeal under Section 173 of the Motor Vehicles Act.

7. Heard Mr.Ma.Pa.Thangavel, learned counsel appearing for the appellants and Mrs.R.Sreevidhya, learned counsel for the respondents 3 and 4.

8. Though notice was served on the respondents 1 and 2 and their names are also printed in the cause list, there is no representation on their behalf.

9. Mr.Ma.Pa.Thangavel, learned counsel appearing for the appellants/claimants contended that both the rider and the pillion rider (Gopi @ Govarthanan) of the two wheeler bearing Registration number TN 32 CW 0916 died in the accident and in the Lok adalat held in Sub Court, Pollachi, the third respondent, the Oriental Insurance Company settled a sum of Rs.11,50,000/- to the claimants, the legal heirs of the rider of the two wheeler in M.C.O.P.109/2018. In the instant case, however the Tribunal has fastened 60% contributory negligence on the part of the



pillion rider of the two wheeler. Hence, he prayed for setting aside the order of the Tribunal.

10. There is nothing on record to show that the pillion rider also contributed to the accident. Hence, fastening negligence on the part of the pillion rider is erroneous and the same is hereby set aside.

11. The quantum of compensation awarded by the Tribunal is not questioned in the present appeal. The Tribunal fixed the notional income of the deceased as 12,000/- and added 40% of towards future prospects 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***. Since the deceased was aged 19 years and died as a bachelor, the Tribunal deducted 50% towards his personal expenses and adopted multiplier 18 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 has also awarded a sum of Rs.50,000/- for pain and sufferings. As per the decision rendered in ***National Insurance Co. vs Pranay sethi and others (cited supra)*** the claimants are entitled to get



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compensation only under loss of dependency, loss of consortium, loss of estate and funeral expenses. The Award passed by the Tribunal and the modified award passed by this Court is shown in the following tabular column:

<i>S. No.</i>	<i>Head</i>	<i>Amount Awarded by the Tribunal</i>	<i>Amount awarded by this court</i>
1.	Loss of dependency	Rs. 18,14,400 /-	Rs. 18,14,400 /-
2.	Loss of consortium (Rs.40,000/- x 2)	Rs.80,000/-	Rs.80,000/-
3.	Funeral expenses	Rs.15,000/-	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-	Rs.15,000/-
5.	Pain and Sufferings	Rs.50,000/-	Nil
Total		Rs.19,74,400/- (less 60% contributory negligence) 7,89,760/-	Rs.19,24,400/-

12. Thus, the compensation awarded by the Tribunal is enhanced to Rs.19,24,400/- that would carry interest at the rate of 7.5% per annum.

13. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.



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ii. The compensation awarded by the Tribunal is enhanced to Rs.19,24,400/-.

iii. 60% Contributory negligence fastened on the part of Gopi @ Govarthanan (deceased) is set aside.

iv. 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.

v. The liability of the owner of the car and the third respondent (the Oriental Insurance Company Limited) is joint and several and the third respondent, Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.19,24,400/- (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.661/2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

vi. On such deposit being made the appellants, claimants are permitted



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to withdraw the same with accrued interest and costs, after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

vii. The appellants/claimants are not entitled to claim any interest for the period of delay of 85 days in filing this appeal.

Consequently, connected miscellaneous petition is closed.

24.10.2024

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

To

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

R.HEMALATHA, J.

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