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CMA.No.2631 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2631 of 2024

1. Kumaresan
2. Jayanthi
3. Muthammal

.... Appellants

vs.

1. Aravind @ Aravindhan @ Gobi
2. The Oriental Insurance Company Limited
Represented by its Branch Manager, Kumbakonam
First Floor, Gopal Raw Library Building,
Town Hall Road, Kumbakonam Town and District.

3. Jayalakshmi

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 20.03.2019 in M.A.C.T.O.P.197/2015 on the file of the Motor Accident Claims Tribunal-cum-District Court, Karaikal.

For Appellants : Ms. G. Lavanya
for Mr. T. Saikrishnan
For R2 : Mrs. R. Rathna Thara



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JUDGMENT

The appellants are the claimants in M.A.C.T.O.P.197/2015 on the file of the Motor Accident Claims Tribunal-cum-District Court, Karaikal. They filed the claim petition under Sections 140 and 166(1) of the Motor Vehicles Act, seeking compensation of Rs.15,00,000/- for the death of one Rajendiran (father of claimants 1 and 2 and son of claimant 4) in a road accident that occurred on 06.07.2015.

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

2.1. On 06.07.2015 Rajendiran (since deceased) was walking along Ambagarathur Road, Thirunallar and at about 9.30 p.m., a speeding TVS JIVE motorcycle bearing Registration Number PY-02/H 5765 hit him as a result of which Rajendiran fell down and sustained injuries all over his body. He was immediately rushed to Government Hospital, Karaikal. However, he succumbed to injuries on the next day, i.e. 07.07.2015.



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3. According to the claimants, the rash and negligent driving of the driver of the motorcycle bearing Registration Number PY-02/H 5765, was the cause of the accident and that since the said vehicle was insured with the second respondent, the Oriental Insurance Company Limited, Kumbakonam, 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 motorcycle remained absent and were set *ex parte*. The second respondent 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 negligence on the part of the rider of the motorcycle bearing Registration Number PY-02/H 5765, and directed the second respondent, insurer of the said motorcycle, to pay compensation of Rs.8,21,000/- to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The Tribunal also held that the



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liability of the Insurance Company and the owner of the motorcycle are joint and several.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Ms. G. Lavanya, learned counsel appearing for the appellants and Mrs. R. Rathna Thara, learned counsel appearing for the second respondent Insurance Company.

8. Ms. G. Lavanya,, learned counsel appearing for the appellants contended that the deceased was a mason earning a sum of Rs.500/- per day. But the Tribunal fixed the notional monthly income of the deceased only as Rs.7,500/-. She therefore prayed for enhancement of compensation.

9. Per contra, Mrs. R. Rathna Thara, learned counsel appearing for the second respondent/Insurance Company contended that the Award



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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 in the present appeal.

10. The deceased, in the instant case, was aged 53 years and there are three dependants. According to the claimants, the deceased was a mason earning a sum of Rs.500/- per day. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.7,500/-. Considering the year of accident and the age of the deceased, this Court fixes the notional monthly income of the deceased as Rs.14,000/-. 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**, 10% is added towards future prospects of the deceased. Since the deceased had three dependents, 1/3 is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 11 as per the decision rendered in *Sarla Verma and others vs. Delhi Transport Corporation and another* reported in **(2009) 6 SCC 121**.



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WEB CC Calculation

Notional Income = Rs.14,000/-

10% Future Prospects = Rs.15,400/-

After 1/3 deduction = Rs.10,266/-

Loss of dependency

= Rs.10,266/- x 12 x 11

= Rs.13,55,112/-

In addition to that the claimants are entitled to Rs.1,20,000/- (40,000 x 3), 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).

10.1. The enhanced amount under the different heads are detailed hereunder:

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	13,55,112/-
2.	Loss of consortium (Rs.40,000/- x 3)	1,20,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-



<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
	Total	15,05,112/-

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.15,05,112/-.
- 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, the Oriental Insurance Company Limited, Kumbakonam, is directed to deposit the enhanced compensation amount of Rs.15,05,112/- (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 to the credit of



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M.A.C.T.O.P.197/2015 on the file of the Motor Accident Claims Tribunal-cum-District Court, Karaikal, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order. The ratio of apportionment made by the Tribunal shall be kept intact.

- v. On such deposit being made, the appellants are at liberty to withdraw their share as per the apportionment made by the Tribunal after filing a proper petition for withdrawal.
- vi. The appellants/claimants are not entitled to claim interest for the period of delay of 79 days in filing this appeal as per the orders of this Court dated 03.09.2024 in C.M.P. No.4311 of 2020.

27.09.2024

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

To

1. Motor Accident Claims Tribunal-cum-District Court, Karaikal,
2. The Oriental Insurance Company Limited
Represented by its Branch Manager, Kumbakonam



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First Floor, Gopal Raw Library Building,
Town Hall Road, Kumbakonam Town and District.

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



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R.HEMALATHA, J.

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