



WEB COPY



C.M.A.No.1569 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

CORAM

THE HON'BLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.1569 of 2024

1.Madeshwari
2.Suhashni
3.Deepa

... Appellants

Vs.

1.Mani

2.The Oriental Insurance Company Limited,
2nd Floor, No.107, Navaladiyan Complex,
Thanthondrimalai,
Karur Taluk and District.

... Respondents

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree dated 22.06.2022 made in M.C.O.P. No.456 of 2014 on the file of the Motor Accidents Claims Tribunal, Namakkal.

For Appellants : Mr.R.S.Sivaram

For Respondents : Mr.S.Arun Kumar
for R2

R1 - Dispensed with

JUDGMENT



WEB.COM

The appellants are the claimants in M.C.O.P. No.456 of 2014 on the file of the Motor Accidents Claims Tribunal, Namakkal. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the death of one Arumugam (husband of claimant 1; father of claimants 2 and 3) in a road accident that took place on 16.11.2013.

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

On 16.11.2013, Arumugam (deceased) was walking along Salem - Namakkal Main Road. When he was nearing Puduchatram, a two-wheeler bearing registration No.TN 28 AB 2516 belonging to the first respondent hit him, which resulted in his instantaneous death.

3. According to the claimants, the rash and negligent driving of the driver of the two-wheeler bearing registration No.TN 28 AB 2516 was the cause of the accident and that since the owner of the two-wheeler has insured the vehicle with the second respondent, the Oriental Insurance Company Limited, both the owner and the Insurance Company are jointly and severally liable to pay compensation to them.



WEB COPY

4. In the Tribunal, both the respondents remained absent and were 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 awarded a sum of Rs.7,10,601/- towards compensation 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 22.06.2022.

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 Mr.R.S.Sivaram, learned counsel appearing for the appellants and Mr.S.Arun Kumar, learned counsel for the second respondent.

8. Mr.R.S.Sivaram, learned counsel appearing for the appellants /



WEB COPY

claimants contended that the deceased was a cycle mechanic, earning a sum of Rs.10,000/- per month. However, the Tribunal had fixed his notional monthly income only at Rs.8,000/-. He, therefore, prayed for enhancement of his notional monthly income.

9. It is seen from the records that the deceased was working as a cycle mechanic, earning a sum of Rs.10,000/- per month. In the absence of income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.8,000/-. Since it seems to be on the lower side, this Court is of the opinion that fixing the deceased's notional monthly income at Rs.10,000/- 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**, 10% is added towards future prospects of the deceased and 1/3 is deducted towards his personal expenses. The deceased was aged about 55 years on the date of the accident and the proper multiplier to be adopted in the instant case is 9 as per the decision rendered in *Sarla Verma and Others Vs. Delhi Transport Corporation and Another* reported in **2009 (6) SCC 121**.

Calculation:



WEB COPY



C.M.A.No.1569 of 2017

Notional Income = Rs.10,000/-

10% Future Prospects = Rs.1,000/-

After 1/3 deduction = Rs.7,333/-

Loss of dependency:

= Rs.7,333/- x 12 x 9

= Rs.7,91,964/-

In addition to that claimants are entitled for Rs.1,20,000/- (Rs.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* reported in **2017 (2) TNMAC 601** (cited supra). Thus, the claimants are entitled to a total compensation of Rs.9,41,964/- (7,91,964 + 1,20,000 + 15,000 + 15,000) as shown in the following tabular column.

<i>S.No.</i>	<i>Heads</i>	<i>Amount granted by this Court in Rs.</i>
1.	Loss of dependency	7,91,964
2.	Loss of Consortium(Rs.40,000/- x 3)	1,20,000
3.	Loss of Estate	15,000
3.	Funeral Expenses	15,000
	Total	9,41,964



WEB COPY

10. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.7,10,601/- to Rs.9,41,964/-.
- 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, Oriental Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.9,41,964/- (less the amount already deposited, if any) 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. No.456 of 2014 on the file of the Motor Accidents Claims Tribunal, Namakkal.
- v. On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after



WEB COPY



C.M.A.No.1569 of 2024

following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

- vi. It is made clear that the appellants are not entitled for interest for the period of delay of 72 days in filing this appeal on the amount enhanced by this Court. No costs.

21.08.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
ab

To

1. The Motor Accidents Claims Tribunal, Namakkal.
2. The Section officer, Record Section, High Court of Madras.



WEB COPY



C.M.A.No.1569 of 2024

R. HEMALATHA. J.,

ab

C.M.A.No.1569 of 2024

21.08.2024