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CMA.No.530 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.530 of 2023

1. Glory
2. Francis
3. Soniya Katherin
4. John Livingston

.... Appellants

VS.

1. V. Jaishankar
2. D. Ravikumar
3. Kotak Mahindra General Insurance Company Limited
39, Montieth Road, Gebroos Sector,
Egmore, Chennai.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 21.10.2021 in M.C.O.P.2783/2018 on the file of the Motor Accidents Claims Tribunal , Small Causes Court, Chennai.

For Appellants	: Mr. K. Varadhakamaraj
R1	: Left
For R2	: Mr. T. Sundaresan
For R3	: Mr.B.Sivakollapan



CMA.No.530 of 2024

JUDGMENT

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The appellants are the claimants in M.C.O.P.2783/2018 on the file of the Motor Accidents Claims Tribunal, Small Causes Court, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.60,00,000/- for the death of one Sekar (husband of the first claimant, father of the claimants 2 to 4) in a road accident that took place on 25.03.2018.

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

2.1. On 25.03.2018 Sekar (since deceased) was driving his auto bearing Registration Number TN-10-AM-8044 on Poonamallee High Road and at about 10.15 p.m., a car bearing Registration Number TN-09-BT-4044, belonging to the second respondent, came in the opposite direction and hit the auto resulting in the instantaneous death of Sekar.

3. According to the claimants, the rash and negligent driving of the driver of the car bearing Registration Number TN-09-BT-4044, was



CMA.No.530 of 2024

the cause of the accident and that since the said vehicle was insured with the third respondent, the Kotak Mahindra General 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 car remained absent and were set *ex parte*. The third 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 driver of the car bearing Registration Number TN-09-BT-4044. Since the first respondent, the driver of the car was under the influence of alcohol at the time of accident, the Tribunal directed the third respondent Insurance Company to pay compensation of Rs.11,70,100/- to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, in the first instance, and then recover the same from the second respondent, the owner of the car, vide its orders dated 21.10.2021.



CMA.No.530 of 2024

WEB COPY

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.K.Varadhakamaraj, learned counsel appearing for the appellants, Mr. T. Sundaresan, learned counsel appearing for the second respondent and Mr.B.Sivakollapan, learned counsel appearing for the third respondent.

8. Mr.K.Varadhakamaraj, learned counsel appearing for the appellants would contend that though the deceased was an auto driver earning a sum of Rs.20,000/- per month, the Tribunal had fixed the notional monthly income of the deceased only as Rs.11,000/-, which is very much on the lower side. He therefore, prayed for enhancement of the monthly income of the deceased.

9. Per contra, learned counsels appearing for the second and



third respondents 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.

10. The accident took place in the year 2018 and the deceased was aged 57 years on the date of accident. In the circumstances, fixing the notional monthly income of the deceased as Rs.15,000/- would be proper. 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 four dependents, 1/4 should be deducted towards his personal expenses. The deceased was aged 57 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

Notional Income = Rs.15,000/-

10% Future Prospects = Rs.16,500/-



CMA.No.530 of 2024

After 1/4 deduction = Rs.12,375/-

Loss of dependency

= Rs.12,375/- x 12 x 9

= Rs.13,36,500/-

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).

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	13,36,500/-
2.	Loss of consortium (Rs.40,000/- x 4)	1,60,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	15,26,500/-

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



CMA.No.530 of 2024

WEB COPY

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.11,70,100/- to Rs.15,26,500/-.
- 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 third respondent, the Kotak Mahindra General Insurance Company Limited, Chennai, is directed to deposit the enhanced compensation amount i.e., Rs.15,26,500/- (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, in the first instance, to the credit of M.C.O.P.2783/2018 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Court No.2) Small Causes Court, Chennai, within a period of four weeks from the date of receipt of a copy of this order and then recover the same



CMA.No.530 of 2024

WEB COPY

from the owner of the car under the same cause of action. The ratio of apportionment made by the Tribunal shall be kept intact.

- v. The appellants/claimants are not entitled to claim any interest for the period of delay of 206 days in filing this appeal, as per the orders of this Court dated 22.02.2023 in C.M.P. No.22946 of 2022.
- vi. On such deposit being made, the appellants/claimants are at liberty to withdraw their share as per the apportionment made by this Court, with costs and interest, after filing a proper petition for withdrawal.

06.09.2024

Index : Yes/No

Speaking/Non-speaking order
bga

To

1. Motor Accidents Claims Tribunal
(Special Subordinate Court No.2) Small Causes Court, Chennai,
2. Kotak Mahindra General Insurance Company Limited
39, Montieth Road, Gebroos Sector,
Egmore, Chennai.

8/10



CMA.No.530 of 2024

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

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CMA.No.530 of 2024

R.HEMALATHA, J.

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C.M.A.No.530 of 2023

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