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CMA.No.1029 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.1029 of 2023

1. M.S.Kumar

2. K.Manjula

3. Selvi K.Kalpana

... Appellants

vs.

1. V.Ramesh

2. Shri Ram General Insurance Co. Ltd.,
No.66, 2nd Floor, City Center Complex,
Thirumalaipillai Road,
T.Nagar, Chennai - 600 017.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award, dated 23.10.2018 in M.C.O.P.6149/2015 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellants : Mr.M.Gouthaman

For R2 : Mrs.R.Sreevidhya



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J U D G M E N T

The appellants are the claimants in M.C.O.P.6149/2015 on the file of the Motor Accident Claims Tribunal, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.50,00,000/- for the death of one K.Lokesh (son of claimants 1 and 2; brother of claimant 3) in a road accident that occurred on 19.03.2015.

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

On 19.03.2015, K.Lokesh (deceased) was riding a two wheeler bearing Registration number TN 19 M 3541 on Canal Road, Mamallapuram and at about 8.30 a.m., when he was nearing Ponchery Matric Higher Secondary School, Mamallapuram, a speeding van bearing Registration number TN 21 AW 4207, hit the two wheeler, resulting in his instantaneous death.

3. According to the claimants, the rash and negligent driving of the driver of the van bearing Registration number TN 21 AW 4207 was



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

4. In the Tribunal, the owner of the vehicle remained absent and was set *exparte*. 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 85% negligence on the part of the driver of the van and 15% negligence on the part of the deceased as he was not wearing helmet at the time of accident and directed the second respondent, Insurance Company to pay compensation of Rs.17,73,100/- (out of total compensation of Rs.20,86,000/-) 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 23.10.2018. The Tribunal also held that the liability of the owner of the van and the insurer is joint and several.



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6. Aggrieved over the quantum of compensation and challenging 15% contributory negligence fastened on the part of the deceased (rider of the two wheeler), the appellants / claimants have filed the present appeal under Section 173 of the Motor Vehicles Act.

7. Heard Mr.M.Gouthaman, learned counsel appearing for the appellants and Mrs.R.Sreevidhya, learned counsel for the second respondent.

8. Mr.M.Gouthaman, learned counsel appearing for the appellants/claimants contended that K.Lokesh (deceased), aged 20 years was working as a Mechanical Engineer in a private concern, earning a sum of Rs.25,000/- per month. However, the Tribunal had fixed a meagre sum of Rs.10,000/- as his notional monthly income. He, therefore prayed for enhancement of compensation. He further contended that the Tribunal was wrong in fastening contributory negligence to the extent of 15% on the part of K.Lokesh (deceased) and prayed for setting aside the orders passed by the Tribunal.



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9. Per contra, Mrs.R.Sreevidhya, 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.

10. Negligence:

A perusal of the records shows that FIR (Ex.P1) was registered against the driver of the van bearing Registration number TN 21 AW 4207 by the Inspector of Police, E1 Mamallapuram Police Station, Kancheepuram District. After conducting investigation, the Inspector of Police, laid a final report against the driver of the van before the Judicial Magistrate, Thirukazhukundram for the offences punishable under Section 279 and 304 (A) I.P.C. However, the Tribunal had fixed 15% contributory negligence on the part of the rider of the two wheeler since he was not wearing helmet at the time of the accident. The manner of the accident shows that the driver of the van was rash and negligent in driving his vehicle. There is nothing on record to show that the rider of the two



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wheeler contributed to the accident. In the circumstances, fastening 15% of contributory negligence on the part of K.Lokesh (deceased) by the Tribunal is erroneous and the same is hereby set aside.

11. Quantum:

According to the claimants, K.Lokesh (deceased) aged 20 years, was working as an engineer in a private concern, earning a sum of Rs.25,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.10,000/-. It is pertinent to point out that the accident took place in the year 2015 and in the facts and circumstances, this Court is of the opinion that fixing notional monthly income of the deceased as Rs.14,000/- 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**, 40% is added towards future prospects of the deceased. The deceased died as a bachelor and hence, 50% is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 18 as per the decision rendered in *Sarla Verma and others vs. Delhi Transport Corporation and another* reported in **(2009) 6 SCC**



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WEB CO Calculation :

Notional Income = Rs.14,000/-

after adding 40% Future Prospects = Rs.19,600/-

After 1/2 deduction = Rs.9,800/-

Loss of dependency:

= Rs.9,800/- x 12 x 18

= Rs.21,16,800/-

In addition to that the claimants are entitled to Rs.1,20,000/- (40,000/-x3), Rs.15,000/- and Rs.15,000/- towards 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). Thus, the claimants are entitled to a total compensation of Rs.22,66,800/- (21,16,800 + 1,20,000 + 15,000 + 15,000 = 22,66,800) as shown in the following tabular column:

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs. 21,16,800 /-
2.	Loss of consortium (Rs.40,000/- x 3)	Rs.1,20,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-



<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
	Total	Rs.22,66,800/-

12. Thus, the compensation awarded by the Tribunal is enhanced to Rs.22,66,800/- 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.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.22,66,800/-.
- iii. 15% Contributory negligence fastened on the part of K.Lokesh (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 lorry and the second respondent (the Shri Ram General Insurance Company Limited) is joint and



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several and the second respondent is directed to deposit the enhanced compensation amount i.e., Rs.22,66,800/- (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.6149/2015 on the file of the Motor Accident Claims Tribunal, Special District Court, Chennai.

- vi. On such deposit being made the appellants, claimants are permitted 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 1306 days in filing this appeal.

22.10.2024

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

To

1.The Motor Accidents Claims Tribunal,

9/11



CMA.No.1029 of 2023

Special District Court, Chennai.

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

R.HEMALATHA, J.

vum

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