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CMA.No.2933 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2933 of 2023

Muthu Radha

... Appellant

vs.

1. A.Naveen Balaji

2. M.Sumathi

3. M/s.The New India Assurance Company Limited,
No.594, First Floor, Obli Towers,
D.B.Road, R.S.Puram,
Coimbatore - 641 002.

... Respondents

(The respondents 1 and 2 remained absent and were set *ex parte* in the lower court and hence notice may be dispensed with)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 25.08.2023 in M.C.O.P.No.224 of 2019 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Coimbatore.

For Appellant : Mr.Harshavarthan.G

For R3 : Mr.J.Chandran



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JUDGMENT

The appellant is the claimant in M.C.O.P.No.224 of 2019 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Coimbatore and she filed the said claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.10,00,000/- for the death of her husband, in a road accident that took place on 30.09.2017.

2. The brief case of the appellant / claimant is as follows :

On 30.09.2017, Surya Narayanan (deceased) was crossing Pollachi - Palladam Main Road at about 19.30 hours. A speeding motorcycle bearing Registration Number TN 41 AE 0454, belonging to the second respondent and insured with the third respondent hit Surya Narayanan, as a result of which, he fell down and sustained injuries all over his body and was rushed to Government Hospital, Pollachi. However, he succumbed to injuries on the same day.

3. According to the claimant, the rash and negligent driving of the driver of the motorcycle was the cause of the accident and that since the owner of the motorcycle had insured her vehicle with the third respondent / The New India Assurance Company Limited, the owner and



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the insurer of the motorcycle are jointly and severally liable to pay compensation.

4. The respondents 1 and 2 remained absent and were set *ex parte* in the Tribunal. The third respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The trial Court after analysing the evidence on record, awarded a compensation of Rs.5,15,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The Tribunal also directed that the third respondent / The New India Assurance Company Limited after paying the said amount can recover the same from the owner of the vehicle / second respondent since it was proved that the driver of the vehicle did not have a valid driving license on the date of the accident. Aggrieved over the quantum of compensation awarded by the tribunal, the appellant/claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, seeking for enhancement of compensation amount.



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6. Heard Mr.Harshavarthan.G, learned counsel appearing for the appellant and Mr.J.Chandran, learned counsel appearing for the third respondent.

7. The deceased Surya Narayanan was a Priest in a temple. In the absence of income proof, the Tribunal fixed the monthly income of the deceased as Rs.7,500/-. It is pertinent to point out that the accident took place in the year 2017 and in the facts and circumstances, this Court is of the opinion that fixing a sum of Rs.15,000/- as notional monthly income of the deceased would meet the ends of justice. The deceased was aged 62 years on the date of the accident and therefore, he is not entitled to get future prospects as per the decision in *National Insurance Co. vs Pranay sethi and others* reported in **2017 (2) TNMAC 601**. Since there is only one dependent, 1/3rd of the deceased's income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is seven as per the decision rendered in *Sarla Verma and others vs. Delhi Transport Corporation and another* reported in **(2009) 6 SCC 121**.

Calculation :



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Notional Income = Rs.15,000/-

After 1/3 deduction = Rs.10,000/-

Loss of dependency :

= Rs.10,000/- x 12 x 7

= Rs.8,40,000/-

In addition to that, as per the decision rendered by the Constitution Bench of the Honourable Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others* reported in **2017 (2) TNMAC 601**, the claimant is entitled to Rs.40,000/- Rs.15,000 and Rs.15,000/- towards "Loss of Consortium, Funeral Expenses and Loss of Estate" respectively. Thus, the claimant is entitled to a total compensation of Rs.9,10,000/- (8,40,000 + 40,000 + 15000 + 15000= 9,10,000) which is extracted here under.

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs.8,40,000/-
2.	Loss of consortium	Rs.40,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.9,10,000/-

8. Thus, the compensation awarded by the Tribunal is enhanced



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from Rs.5,15,500/- to Rs.9,10,000/- which would carry interest at the rate of 7.5% per annum.

9. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.5,15,500/- to Rs.9,10,000/-.

(iii) The appellant / claimant is 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 New India Assurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.9,10,000/- (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 to the credit of M.C.O.P.No.224 of 2019 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Coimbatore and recover the same from the 2nd respondent on the same cause of action.



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(v) On such deposit being made, the appellant / claimant is at

liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law.

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

To

- 1.The Motor Accidents Claims Tribunal,
IV Additional District Court, Coimbatore.
2. M/s.The New India Assurance Company Limited,
No.594, First Floor, Obli Towers,
D.B.Road, R.S.Puram,
Coimbatore - 641 002.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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