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CMA.No.977 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.977 of 2024

- 1.Kaveri
2. Palaniappan
3. Tamilvani
4. Suthanthira Priya
5. Hemalatha

.... Appellants

vs.

1. P. Andigounder
2. M/s. United India Insurance Company Limited
Salem, Divisional Office No.1. T.P. Hub,
No.104-A, Ranga Building, Peramanur Main Road,
Near Four Roads, Peramanur, Salem.

3. P. Abrose . .. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 01.11.2022 in M.C.O.P.558/2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants : Mr. R. Navaneetha Krishnan
R1 & R3 : No appearance
For R2 : Mrs. R. Sreevidhya

JUDGMENT



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The appellants are the claimants in M.C.O.P.558/2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. They filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.40,00,000/- for the death of one Naveenkumar (son of claimants 1 and 2 and brother of claimants 3 to 5) in a road accident that occurred on 21.11.2020.

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

2.1. On 21.11.2020 Naveenkumar (since deceased) was riding a two wheeler bearing Registration Number TN 30 X 7837 on Edappaddy-Jalagandapuram Main Road and at about 22.00 hours, a speeding Maruthi Omni Ambulance bearing Registration Number TN 30 BW 7405 hit his two wheeler as a result of which he fell down and sustained injuries all over his body. He was immediately rushed to Government Hospital, Salem. However he succumbed to injuries on the next day.



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3. According to the claimants, the rash and negligent driving of the driver of the Maruthi Omni Ambulance bearing Registration Number TN 30 BW 7405 belonging to the first respondent was the cause of the accident and that since the said Ambulance was insured with the second respondent, the United India Insurance Company Limited, Salem, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the first respondent, the owner of the Ambulance remained absent and was 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. The claim petition against the third respondent was dismissed.

5. The Tribunal, after analysing the evidence on record fastened negligence on the part of the driver of the Maruthi Omni Ambulance bearing Registration Number TN 30 BW 7405. Since the driver of the Ambulance did not possess a valid driving license on the date of



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accident, the Tribunal, vide its orders dated 01.11.2022, directed the United India Insurance Company Limited to pay compensation of Rs.11,45,000/- to the claimants together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation in the first instance and then recover the same from the owner of the Maruthi Omni Ambulance bearing Registration Number TN 30 BW 7405, under the same cause of action (pay and recover).

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. Navaneetha Krishnan, learned counsel appearing for the appellants and Mrs. R. Sreevidhya learned counsel appearing for the second respondent Insurance Company.

8. Mr. R. Navaneetha Krishnan, learned counsel appearing for the appellants contended that the deceased was owning a power loom earning a sum of Rs.30,000/- per month. However, the Tribunal fixed



the notional monthly income of the deceased only as Rs.10,000/- including future prospects. He therefore, prayed for enhancement of compensation.

9. Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the second respondent/Insurance Company 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 in the present appeal.

10. According to the claimants, Naveenkumar (deceased) was aged 28 years and was owning a Power Loom earning a sum of Rs.30,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.10,000/- including future prospects. Considering the year of accident and the age of the deceased, this Court fixes the notional monthly income of the deceased as Rs.16,000/-. 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**, 40% is added towards future prospects of the deceased. Since the deceased died as a bachelor, 1/2 is deducted towards his



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personal expenses. The proper multiplier to be adopted in the instant case

is 17 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.16,000/-

40% Future Prospects = Rs.22,400/-

After 1/2 deduction = Rs.11,200/-

Loss of dependency

= Rs.11,200/- x 12 x 17

= Rs.22,84,800/-

In addition to that the claimants are entitled to get Rs.2,00,000/- (40,000 x 5), 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:



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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	22,84,800/-
2.	Loss of consortium (Rs.40,000/- x 5)	2,00,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	25,14,800/-

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.25,14,800/-.
- 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.



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iv. The second respondent, the United India Insurance Company Limited, Salem, is directed to deposit the enhanced compensation amount of Rs. 25,14,800/- (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, in the first instance, to the credit M.C.O.P.558/2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order, and then recover the same from the owner of the Maruthi Omni Ambulance bearing Registration Number TN 30 BW 7405, under the same cause of action (pay and recover). The ratio of apportionment made by the Tribunal shall be kept intact.

v. On such deposit being made, the claimants are at liberty to withdraw the same after filing proper petition for withdrawal.

vi. The appellants/claimants are not entitled to claim any interest for the period of delay of 310 days in filing this appeal as per the orders of this Court dated 22.03.2024 in C.M.P. No.28258 of 2023.



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

To

1. Motor Accident Claims Tribunal, Special District Court, Salem.
2. M/s. United India Insurance Company Limited
Salem, Divisional Office No.1. T.P. Hub,
No.104-A, Ranga Building, Peramanur Main Road,
Near Four Roads, Peramanur, Salem.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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