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CMA.No.1509 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.1509 of 2024

1. Rubia Devi

2. Muthulingam

... Appellants

vs.

1. S.Venkatesan

2. The New India Assurance Co. Ltd.,
Chennai Regional Office,
Motor Third Party Cell,
No.232, NSC Bose Road,
Bombay Mutual Building,
6th Floor, Chennai - 600 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award, dated 07.03.2023 in M.C.O.P.5035/2018 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

For Appellants : Ms.S.R.Suga

For R2 : Mrs.S.R.Sumathy



CMA.No.1509 of 2024

JUDGMENT

Aggrieved over the dismissal of the claim petition in

M.C.O.P.5035/2018, the present appeal is filed by the claimants.

2. The appellants are the claimants in M.C.O.P.5035/2018 on the file of the Motor Accident Claims Tribunal, Small Causes Court, Chennai. They filed the claim petition under Sections 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.35,00,000/- for the death of their son M.Muralidharan, in a road accident that took place on 22.02.2018.

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

On 22.02.2018, M.Muralidharan (deceased) was riding a two wheeler bearing Registration number TN-12-V-7967 on Puzhal - Tambaram Bypass road and at about 7.45 hours, a speeding lorry bearing Registration number TN-28-AF-3638 was going ahead of him. The driver of the lorry applied sudden brake, as a result of which, Muralidharan hit the lorry and died on spot.

4. According to the claimants, the rash and negligent driving of the driver of the lorry was the cause of the accident and that since the said



CMA.No.1509 of 2024

vehicle was insured with the second respondent, the New India Assurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

5. In the Tribunal, the owner of the lorry 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.

6. The Tribunal after analysing the evidence on record fastened negligence on the part of the rider of the two wheeler M.Muralidharan (deceased) and dismissed the entire claim petition, vide its orders dated 07.03.2023.

7. Heard Ms.S.R.Suga, learned counsel appearing for the appellants and Mrs.S.R.Sumathy, learned counsel appearing for the second respondent.

8.Negligence:

8.1. In order to prove negligence on the part of the driver of the



lorry, the claimants have examined one R.Senthil kumar (P.W.2), eye witness to the occurrence, who had spoken about the manner of accident.

His evidence is that the driver of the lorry was rash and negligent. Nothing useful was suggested to him during the course of cross examination to discredit or disbelieve his version.

8.2. A perusal of the FIR (Ex.P1) shows that M.Muralidharan (deceased) hit a lorry, which was parked on the left hand side of the road. It is pertinent to point out that the road on which the accident took place is a four way lane. There is nothing on record to show that the place where the lorry was parked was earmarked for parking vehicles. The referred charge sheet filed against the deceased does not speak about this. Moreover, it is not shown that the lorry was parked with an indicator. In the circumstances, the Tribunal was wrong in dismissing the claim petition by fastening negligence on the part of the rider of the two wheeler. It is pertinent to point out that the criminal court records are not binding on the Motor Accident Claims Tribunal and the Tribunal has to assess the evidence independently. In the instant case, the eyewitness account is clear as to the manner of the accident and hence negligence is fastened on the



CMA.No.1509 of 2024

part of the driver of the lorry.

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9. Quantum:

According to the claimants, the deceased aged 20 years, was a student, studying II year B.Sc., (AME) in Hindustan Information Technology, Padapai, Kancheepuram District.

10. In *Kishan Gopal and another vs. Lala and others* reported in **2013 (2) TN MAC 358**, the Hon'ble Supreme Court fixed the notional income of a minor child as Rs.30,000/- per annum and granted a sum of Rs.50,000/- under the other conventional heads. The accident in *Kishan Gopal and another vs. Lala and others* (cited supra) happened in the year 1992. In the present case, considering the passage of time and the age of the victim, fixing Rs.9,000/- per month as notional income of the deceased would meet the ends of justice. The proper multiplier to be adopted in the instant case is 18, as per the decision in *Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121*. Calculation for loss of dependency is worked out here under:

Calculation :



CMA.No.1509 of 2024

Notional Income = Rs.9,000/- x 12 = Rs.1,08,000/-

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= Rs.1,08,000/- x 18

= Rs.19,44,000/-

In addition to that the claimants are entitled to Rs.80,000/- (40,000 x 2), Rs.15,000/- and Rs.15,000/- towards "loss of consortium, funeral expenses and loss of estate" 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.20,54,000/- (19,44,000 + 80,000 +15,000 +15,000 = 20,54,000) as shown in the following tabular column:

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	19,44,000/-
2.	Loss of consortium (40,000 X 2)	80,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
Total		20,54,000/-

11. In the result,

- The Civil Miscellaneous Appeal is allowed. No costs.
- The orders dated 07.03.2023 in M.C.O.P.5035/2018 on the file of



CMA.No.1509 of 2024

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the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai, is set aside.

iii. The appellants / claimants are entitled to compensation of Rs.20,54,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

iv. The second respondent, the New India Assurance Company Limited, is directed to deposit the compensation amount i.e., Rs.20,54,000/- 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.5035/2018 on the file of the Motor Accident Claims Tribunal, III Court of Small Cause, Chennai.

v. Apportionment :

claimant 1 / Mother	Rs.10,54,000/- (with interest and costs)
claimant 2 / Father	Rs.10,00,000/-

vi. The claimants are at liberty to withdraw their respective shares after following due process of law.

vii. The appellants/claimants are not entitled to claim any interest for the period of delay of 101 days in filing this appeal.



CMA.No.1509 of 2024

28.10.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
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To

- 1.The Motor Accidents Claims Tribunal,
III Court of Small Causes, Chennai.
- 2.The Section Officer, VR Section,
Madras High Court, Chennai.

R.HEMALATHA, J.

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CMA.No.1509 of 2024

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