IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.83 of 2024

1. M. Sarala
2. S. Mohanasundaram .... Appellants

vs.

1. Abdul Rahman

2. The United India Insurance Company Limited,
Third Party Hub, Silinghi Building
No.134, Greams Road, Chennai 600 006. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 30.06.2023 in M.C.O.P.No.1030/2018 on the file of the Special Sub Judge No.II, Court of Small Causes, Chennai.

For Appellants : Mr.S.P. Yuvaraj

For R2 : Mrs. R. Vijayakamala

JUDGMENT

The appellants are the claimants in M.C.O.P.No.1030/2018 on the file of the Special Sub Judge No.II, Court of Small Causes, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.30,00,000/- for the death of their son Parthiban, in a road accident that occurred on 15.08.2017.

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

2.1. On 15.08.2017 Parthiban (since deceased) was riding his two wheeler bearing Registration Number TN 03 S 7987 along with one Saran as a pillion rider. Both of them were proceeding towards S.N. Chetty Road, Chennai. At about 8 p.m., a speeding motorcycle bearing Registration Number TN 06 R 4803 came in the opposite direction and hit the two wheeler driven by Parthiban as a result of which Parthiban and Saran fell down and sustained injuries all over their body. Both of them were immediately rushed to Government Stanley Hospital, Chennai. While Parthiban died on the way to hospital, Saran was admitted in the hospital for 15 days and then discharged.

3. According to the claimants, the rash and negligent driving of the driver of the motorcycle bearing Registration Number TN 06 R 4803, was the cause of the accident and that since the said vehicle was insured with the second respondent, The United India Insurance Company Limited, Chennai, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the owner of the motorcycle 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.

5. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the rider of the motorcycle bearing Registration Number TN 06 R 4803, and directed the second respondent,

insurer of the said motorcycle, to pay compensation of Rs.16,22,000/- to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The Tribunal also held that the liability of the Insurance Company and the owner of the motorcycle is joint and several.

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.S.P.Yuvaraj, learned counsel appearing for the appellants and Mrs. R. Vijayakamala, learned counsel appearing for the second respondent Insurance Company.

8. Mr.S.P.Yuvaraj, learned counsel appearing for the appellants contended that the deceased Parthiban was working as a welder earning a sum of Rs.25,000/- per month. However, the Tribunal fixed the notional monthly income of the deceased only as Rs.10,000/-. He therefore prayed for enhancement of compensation.

9. Per contra, Mrs. R. Vijayakamala, 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. The deceased, in the instant case, was aged 24 years on the date of accident. According to the claimants, the deceased was working as a welder 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/-. Considering the year of accident and the age of the deceased, this Court fixes the notional monthly income of the deceased as Rs.15,000/-. 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 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 121.***

<u>Calculation</u>

Notional Income = Rs.15,000/-

40% Future Prospects = Rs.21,000/-

After 1/2 deduction = Rs.10,500/-

<u>Loss of dependency</u>

= Rs.10,500/- x 12 x 18

= Rs.22,68,000/-

In addition to that the claimants are entitled to Rs.80,000/- (40,000 x 2), 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:

S.No.	***Head***	***Amount granted by this court (Rs.)***
1.	Loss of dependency	22,68,000/-
2.	Loss of consortium (Rs.40,000/- x 2)	80,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-

S.No.	Head	Amount granted by this court (Rs.)
	Total	23,78,000/-

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.23,78,000/-.

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 second respondent, the The United India Insurance Company Limited,Chennai, is directed to deposit the enhanced compensation amount of Rs.23,78,000/- (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 to the credit of

M.C.O.P.No.1030/2018 on the file of the Special Sub Judge No.II, Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order. The ratio of apportionment made by the Tribunal shall be kept intact.

v. On such deposit being made, the appellants are at liberty to withdraw their share as per the apportionment made by the Tribunal after filing a proper petition for withdrawal.

30.09.2024

Index : Yes/No
Speaking/Non-speaking order

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To

1. Special Sub Judge No.II,
   Court of Small Causes, Chennai.

2. The United India Insurance Company Limited,
   Third Party Hub, Silinghi Building
   No.134, Greams Road, Chennai 600 006.

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

R.HEMALATHA, J.

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