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CMA.No.1795 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1795 of 2023

1.Kanimozhi

2.Minor. Pugalavanan

3.Minor. Harikrishnan

(2 and 3 minor appellants are represented
by their mother and natural guardian Kanimozhi)

4.K.Ponnusamy

5.P.Kasthuri

... Appellants

vs.

1.Anandh

2.The United India Insurance Company Limited,
Neyveli, Cuddalore District.

... Respondents

(The first respondent was set *ex parte* in lower court)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 25.04.2012 in M.C.O.P.114 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Court, Kallakurichi.



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For Appellants : Mr.A.G.Rajan
For R2 : Mr.P.Sankaranarayanan

J U D G M E N T

The appellants are the claimants in M.C.O.P.114 of 2012 on the file of the Motor Accident Claims Tribunal, Kallakurichi. They filed the claim petition under Section 166 (1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.15,00,000/- for the death of one Rajendiran @ Rajagopal, (husband of claimant 1, father of claimants 2 and 3 and son of claimants 4 and 5) in a road accident that took place on 07.03.2010.

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

On 07.03.2010, Rajendiran @ Rajagopal (since deceased) was riding his two wheeler bearing Registration Number TN-31-C-2340 on Kachirayapalayam Road and at about 15.35 p.m. another two wheeler bearing Registration Number TN-32-L-1748 belonging to the first respondent came in a rash and negligent manner and hit the two wheeler driven by Rajendiran @ Rajagopal (deceased), resulting in his instantaneous death.



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3. According to the claimants, the rash and negligent driving of the driver of the two wheeler bearing Registration Number TN-32-L-1748 was the cause of the accident and that since the said vehicle was insured with the second respondent, the United India Insurance Company Limited, the owner of the vehicle and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the owner of the two wheeler (first respondent) remained absent and was set *ex parte*. The second respondent, the United India Insurance Company Limited 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 driver of the two wheeler bearing Registration Number TN-32-L-1748 and awarded compensation of Rs.4,75,000/- to the appellants / claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation,



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vide its orders dated 07.08.2023. The Tribunal also held that the liability of the owner and the insurer is joint and several.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellants / claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mr.A.G.Rajan, learned counsel appearing for the appellants and Mr.P.Sankaranarayanan, learned counsel appearing for the second respondent.

8. Mr.A.G.Rajan, learned counsel appearing for the appellants would contend that the deceased was working as a Mason in Singapore earning a sum of Rs.30,000/- per month. However, the Tribunal fixed the notional monthly income of the deceased as Rs.3,500/-, which, according to him, is very meagre. He therefore, prayed for enhancement of the notional monthly income of the deceased.



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9. Per contra Mr.P.Sankaranarayanan, learned counsel appearing for the second respondent 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 at this stage.

10. According to the claimants, the deceased was working as a Mason in Singapore earning a sum of Rs.30,000/- per month. However, no satisfactory evidence was adduced by them to substantiate the same. The passport (Ex.P4) shows that the deceased was frequently visiting Singapore and was not permanently employed over there. However, considering the age of the victim and the year of the accident, this Court is of the opinion that fixing notional monthly income of the deceased at Rs.8,000/- 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. Since there are five dependents, 1/4th of the deceased's income should be deducted towards his personal expenses. The



deceased was aged 36 years on the date of accident and the proper multiplier to be adopted in the instant case is 15 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.8,000/-

40% Future Prospects = Rs.11,200/-

After 1/3rd deduction = Rs.8,400/-

Loss of dependency

= Rs.8,400/- x 12 x 15

= Rs.15,12,000/-

In addition to that the claimants are entitled to 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). Thus, the claimants are entitled to a total compensation of Rs.17,42,000/- (15,12,000 + 2,00,000 + 15,000 + 15,000= 36,32,000) as shown in the following tabular column.



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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of dependency	Rs.15,12,000/-
2.	Loss of consortium (Rs.40,000/- x 5)	Rs.2,00,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.17,42,000/-

11. Thus, the compensation awarded by the Tribunal is enhanced from Rs.4,75,000/- to Rs.17,42,000/- which would carry interest at the rate of 7.5% per annum.

12. In the result,

- i. The Civil Miscellaneous Appeal is allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.4,75,000/- to Rs.17,42,000/-.
- iii. The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, within a period of four



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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 United India Insurance Company Limited, is directed to deposit the enhanced compensation amount i.e., Rs.17,42,000/- (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.114 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Court, Kallakurichi.

v. Apportionment :

1st claimant / Wife	Rs.4,42,000/- (with interest and costs)
2nd claimant / Son (Minor)	Rs.4,50,000/-
3rd claimant / Son (Minor)	Rs.4,50,000/-
4th claimant / Father	Rs.2,00,000/-
5th claimant / Mother	Rs.2,00,000/-



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vi. The compensation amount of the minor claimants 2 and 3 shall be deposited in any one of the Nationalised Bank till they attain majority. The claimants 1, 4 and 5 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 1789 days in filing this appeal.

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



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To

- 1.The Motor Accidents Claims Tribunal,
III Additional District and Sessions Court, Kallakurichi.
- 2.The United India Insurance Company Limited,
Neyveli, Cuddalore District.
- 3.The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

mtl

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