

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2017

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.1217 of 2008
and MP.No.1 of 2008

National Insurance Co. Ltd.,
751, Anna Salai, III Floor,
Chennai - 600 002.

.. Appellant/2nd Respondent

Vs.

- 1.D.Suganthi
- 2.Minor. D.Seesal Richard
- 3.Minor D.Agasteen
(Minors represented by their next friend and mother Suganthi)
- 4.Aruputham .. Respondents 1 to 4/Claimants
- 5.Poonram Hardwares
No.2/18, Velacheri Main Road,
Medavakkam - 601 302.
[R5 -Ex parte before the Tribunal].. Respondent No.5/
1st Respondent

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act against the award and decree dated 12.02.2007 made in MCOP.No.193 of 2005 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, (FTC-III), Poonamallee.

For Appellant : Mr. S.Arun Kumar

For Respondents
1 to 4 : Batta Due (R5-Exparte before Tribunal)

JUDGMENT

On 10.01.2005, at about 11.45 a.m., one David Muthupandian was coming in his cycle after making some purchase in the provision store. There was a lorry before him and another tourist van behind him. While so, a tipper lorry bearing No.TN22-E-1175 came rashly and negligently and dashed against the tourist van, the lorry, as well as the cyclist Muthupandian, owing to which David Muthupandian died on the spot. He was stated to be 32 years at that relevant time and was stated to be earning Rs.4,500/- as a security staff in a

private agency. Consequent to his death, his young widow, two minor children and his mother moved the Tribunal with a claim of Rs.10,03,000/- whereas the Tribunal has passed an award for Rs.4,96,000/- payable with interest at 7.5% per annum, fastening the liability jointly and severally on the appellant and the fifth respondent herein.

2. For arriving at the compensation on the head of loss of support to the family, the Tribunal notionally fixed the monthly income of the deceased at Rs.3,000/- and adopted 17 as a multiplier, and after deducting 1/3 thereof towards personal expenses of the victim, it fixed the total compensation payable on this head at [Rs.2,000x12x17] Rs.4,08,000/- and including the other heads of compensation, it arrived at the award amount of Rs.4,96,000/-.

3. Learned counsel for the appellant argued that the Tribunal has misconceived notional income of the deceased at a rate higher than what a person similarly placed would have earned at the relevant time. Consequently, the compensation awarded on the head of loss of dependency is disproportionately high.

4. Notice of this appeal has not been served on the respondents. The appeal itself is pending nearly for eight years. The learned counsel for the appellant submitted that as per his instructions, no appeal has been preferred by the claimants as yet. Therefore, this Court opted to consider the merit of appellant's contention on its own strength and sustainability.

5. If the march of law since the passing of the award has to be reckoned, then the award cannot be stated to be unconscionably high. Notional income is chiefly determined by factoring in cost of living prevalent at the time of accident, the earning potential by the victim of the accident, and the compulsion on the victim to support his family and his responsibility to grant his family a decent living. There surely will be an element of approximation involved. Therefore, even if the appellant were to suggest some income as a better notional income, that too is susceptible to the very arbitrariness of which the approach of the Tribunal is criticised. Secondly, if the compensation awarded on non-pecuniary heads of compensation is scrutinized, they do not appear to be reasonable. On an over all appraisal, I find no merit in the contention of the appellant, and the notional month income as fixed by the Tribunal is just, fair and reasonable in the circumstances.

6. In the result, the appeal is dismissed and award passed In MCOP.No.193 of 2005 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, (FTC-III), Poonamallee.is hereby confirmed. The appellant and the fifth respondents are held jointly and severally liable to deposit the entire award amount as determined by the Tribunal along with accrued interest, less any amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order, whereupon, the claimant is permitted to withdraw the same forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To:

1.The Motor Accidents Claims Tribunal
Additional District and Sessions Judge,
Fast Track Court No.III
Poonamallee.

2.The Section Officer,
VR Section
High Court, Chennai - 600 104.

+1 cc to Mr.S.Arunkumar Advocate sr 59587

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CMA.No.1217 of 2008

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