

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2017

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.644 of 2010

S.Samba
S.Senthil Kumar (since died)
T.S.Sankaran (since died) .. Appellants/Petitioners

Vs.

1.A.Lilly Ranganathan
(R1 remained ex parte)

2.The New India Assurance Co. Ltd.,
No.46, Moore Street, ' Regina Mansion'
Chennai - 600 001. ... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.10.2009 made in MCOP.No.1339 of 2005 on the file of V Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.K.Ayyadurai
For Respondents : Mr.J.Chandran [for R2]
R1 - Ex parte

JUDGMENT

In an unfortunate accident that took place on 17.11.2004, at about 16.45 hours one Senthil Kumar while riding his motorcycle suffered multiple injuries including serious fractures to his pelvic and pubic area and was hospitalised for close to three months. It is submitted that shortly after a year since accident, he committed suicide. While alive he had preferred a claim petition seeking a compensation of Rs.20,00,000/-, and on his death, his parents got themselves impleaded and prosecuted the same. As against the claim made by the injured himself, the Tribunal has passed an award posthumously for Rs.3,02,850/-, out of which medical expenses alone constituted Rs.2,47,850/-. The other heads are transportation, funeral expenses and extra nourishment. Nothing was awarded for the injuries suffered by the victim which in essence would accrue to his estate. No compensation was also paid on the head of loss of love and affection to the parents.

2. The shortcoming in the award was highlighted by the learned counsel for the appellant and has already been indicated in the paragraph above. The nature of injury, as indicates inter alia includes multiple fractures of the pelvic area and pubic bones, as well as rupture of urethra. What ultimate consequence it would have on the victim of the accident was not assessed as the victim had committed suicide before the enquiry into his claim. It is in the absence of evidence, this Court is required to make an estimate of all possible damages that would have visited the victim, had the victim been alive.

3. Heard both sides. Mr.J.Chandran, the learned counsel for the insurance company of the offending vehicle only reminded the Court that while the victim might have to be compensated for the injuries suffered even in the absence of any medical evidence, the Court may have to exercise such caution as is required to ensure that the compensation determined is proportionate to impact of the injuries suffered by the victim.

4. The victim of the accident was a bachelor and stated to be a mechanic. The nature of injuries that he had suffered to his abdominal and pubic area with rupture of urethra, were likely to leave a long term impact on his very life and not just in his avocation. In the absence of any medical evidence to understand the actual consequences, this Court may have to consider that he might have suffered 40% functional disability. Reckoning his annual income at Rs.36,000/-, and adopting a multiplier of 18 and reducing the same to 40%, the compensation payable would be Rs.2,59,200/-. For loss of love and affection to his mother Rs.50,000/- is granted. On other heads, the award of the Tribunal is confirmed. The break-up details of the enhanced award of compensation reads as follows :

Heads of compensation	Amount Enhanced (Rs.)
Towards disability	2,59,200.00
Loss of love and affection	50,000.00
Transportation	25,000.00
Extra nourishment	25,000.00
Medical expenses	2,47,850.00
Funeral expenses	5,000.00
Total :	6,12,050.00

5. In the result, the appeal is partially allowed and the award amount is enhanced from Rs.3,02,850/- to Rs.6,12,050/-. The second respondent/insurance company is directed to pay the enhanced award of compensation payable with interest at 9% per annum, less if any already deposited, within a period of six weeks from the date of receipt of a copy of this order, whereupon the first appellant is permitted to withdraw the same forthwith. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To:

1. The V Judge,
V Court of Small Causes
Motor Accident Claims Tribunal
Chennai.
2. The Section Officer
VR Section
High Court Madras,
Chennai.

+1 CC to Ms.N.M. Muthurajan, Advocate sr 59767.
+1 CC to Ms.J. Chandran, Advocate sr 59811

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SS(CO)
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