

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.HEMALATHA

C.M.A.No.1695 of 2010

1.Esther Vinolia
2.Annamal
3.Vasanthmary
4.Minor Rita
5.Minor Lasar
6.Minor Manohari
7.Minor Abraham

Petitioners 4 to 7 are represented
by their mother/next friend
the 1st petitioner/appellant Appellants/Claimants

..Vs..

1.Murugesan
2.The Divisional Manager,
The New India Assurance Company Ltd.,
Thiruvannamalai. Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the order and judgment dated 28.04.2006 in M.C.O.P.No.696 of 2005 on the file of Motor Accident Claim Tribunal, District Court, Thiruvannamalai.

For Appellants : Ms.M.Malar

For Respondents : No appearance for R1

Mrs.S.R.Sumathi

JUDGMENT

This appeal is filed under Section 173 of the Motor Vehicles Act 1988, by the claimants in M.C.O.P.No.696 of 2005, on the

file of the Motor Accident Claim Tribunal, District Court, Thiruvannamalai.

2. The case of the appellants / claimants is that when the deceased Peter was riding his two wheeler bearing Registration No.T.N.25C.7039 on Thiruvannamalai-Sengam Road, a speedy lorry bearing No.T.N.C.7515 belonging to the 1st respondent came on the opposite direction rashly and negligently and hit the two wheeler, as a result of which, the deceased Peter was thrown out of his two wheeler and died on the spot. According to the claimants, the accident took place due to the rash and negligent driving of the driver of the lorry and that since the owner of the lorry has insured his vehicle with the 2nd respondent Insurance Company, both the respondents are jointly and severally liable to pay compensation to the appellants/claimants.

3. The first respondent owner of the lorry remained absent before the trial Court and the second respondent / the Insurance Company contested the case by contending that the first respondent / Driver drove the vehicle by following the traffic rules and regulations and that they are not liable to pay any compensation to the claimants.

4. The learned District Judge, Motor Accident Claim Tribunal, Thiruvannamalai, after full contest, passed an award directing the respondents 1 and 2 to pay a sum of Rs.3,91,000/- to the claimants jointly and severally together with interest at the rate of 7.5% per annum. Aggrieved over the award passed by the trial Court, the claimants have filed the present appeal.

5. Ms.M.Malar, learned counsel appearing for the appellants contended that though there are more than five dependants for the deceased Peter, the trial Court has deducted 1/3rd of his salary towards his personal expenses. She would also contend that no amount was granted towards loss of consortium and loss of estate of the deceased and also for future prospects. It is further contended by her that a very meagre amount of Rs.2,000/- alone is granted towards funeral expenses.

6. Per contra, Mrs.S.R.Sumathi, learned counsel appearing for the respondent contended that since the accident took place during the year 2005, the quantum cannot be enhanced.

7. The Constitution Bench of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi and Others reported in 2017 (2) TANMAC 601 has laid down that '(i) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of

40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(ii) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation''.

8. Therefore, by applying the above principles, 25% should be added towards future prospects.

9. In the same judgment referred above, it has been held that on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, an amount of Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively should be awarded.

10. The age of deceased Peter on the date of accident was 40 years, as per the Postmortem report. The claimants did not adduce any evidence to show that the deceased Peter was earning a sum of Rs.5,000/- per month and therefore, the monthly income of Rs.3,000/- taken by the trial Court, cannot be faulted with.

11. As per the above decision, the award granted is detailed below:

Loss of Dependency	=	Rs.5,40,000/-
(3000x25%(-)1/5[deduction]x15x12)		
Loss of consortium	=	Rs.40,000/-
Loss of estate	=	Rs.15,000/-
Loss of funeral expense	=	Rs.15,000/-
Total		Rs.6,10,000/-

12. Thus, the total award amount is Rs.6,10,000/- (Rupees Six Lakhs Ten Thousand only) which shall be paid by the 2nd respondent Company with interest at the rate of 7.5% per annum.

13. The learned counsel appearing for the respondent contended that there is a delay of 1040 days in filing the present appeal and therefore, the claimants cannot be given any interest for the said period. There is force in the contention of the learned counsel appearing for the respondent and the appellants cannot claim interest for 1040 days.

14. Thus, a sum of Rs.3,00,000/- is awarded to the 1st petitioner / wife of the deceased with interest and the balance amount shall be equally shared by the appellants 2 to 7. The enhanced award amount shall be deposited to the credit of the Motor Accident Claims Tribunal Account of learned Principal District Judge, Thiruvannamalai, within a period of two months from the date of receipt of a copy of the orders passed by this Court. The claimants are directed to furnish the bank details along with necessary documents as per the circular issued by this High Court before withdrawing the amount and also to pay necessary court fee for the enhanced compensation amount.

15. With the above observations, the Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sk/mbi

To

1. The Motor Accident Claim Tribunal/District Court, Thiruvannamalai.
2. The Section Officer, V.R.Section, High Court, Madras.

+1 cc to M/s.M.Malar, Advocate Sr.No.76838

+1 cc to Mrs.S.R.Sumathy, Advocate Sr.No.76688

सत्यमेव जयते

CMA.No.1695 of 2010

CSL/30.01.2019

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