

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1905 of 2011

1.Krishnaveni

2.Jayanthi

3.Kalidass

4.Damodharan

5.Ponraj

6.Madanraj

... Appellants/Claimants

..Vs..

1.P.M.Jinna

2.National Ins. Co. Ltd.,

No.661, Trunk Road,

Poonamallee, Chennai - 56. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 17.08.2009 in M.C.O.P.No.322 of 2007, on the file of the Motor Accidents Claims Tribunal, Additional District & Sessions Judge, Fast Track Court No.I, Poonamallee.

For Appellants : Ms.Y.Jayanthi Bhaskar for
Mr.J.Mahalingam

For Respondents : Mr.S.Arunkumar for R1
Mr.L.Ganesh for R2

JUDGMENT

The appellants are the claimants in M.C.O.P.No.322 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District & Sessions Judge, Fast Track Court No.I, Poonamallee.

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

On 24.03.2006, the deceased Govindasamy was riding his motorcycle TVS 50 bearing Registration No.TN-01-W-3195 at Cheyyur. When he was nearing Theeppanchiyanman Temple, an auto bearing Registration No.TN-21-B-4126 belonging to the first respondent came with high speed and hit him causing grievous injuries throwing him out of his bike. He was immediately rushed to Government Hospital, Chennai, where, he succumbed to the injuries on 26.03.2006.

3. According to the appellants/claimants, the accident took place due to the rash and negligent driving of the driver of the Auto belonging to the first respondent. Since the first respondent has insured his vehicle with the second respondent, both the respondents are jointly and separately liable to pay compensation to the appellants/claimants.

4. The first respondent remained absent and was set ex-parte in the trial Court. The second respondent filed a counter denying all the allegations of the appellants/claimants.

5. The learned Additional District & Sessions Judge, Fast Track Court No.I, Poonamallee, after analyzing the entire evidence on record, awarded a compensation of Rs.4,40,600/- together with interest at the rate of 7.5% per annum to the appellants/ claimants. Aggrieved over the quantum of compensation awarded by the trial Court the appellants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Ms.Y.Jayanthi Bhaskar, the learned counsel appearing for the appellants contended that the trial Court had deducted 1/3rd towards personal expenses of the deceased especially when there are six persons depending on the income of the deceased.

7. Per contra, Mr.M.L.Ganesh, the learned counsel appearing for the second respondent would contend that two sons of the deceased are aged 24 and 23 and they cannot be said to be depending on the income of the deceased Govindasamy.

8. A perusal of the records shows that the number of persons depending on the deceased Govindasamy were four and therefore, 1/4th alone can be deducted towards the personal expenses of the deceased Govindasamy. The trial Court has fixed the monthly income of the deceased at Rs.3,900/- and the notional income should be fixed at Rs.4,500/- in the absence of sufficient proof of in Court. The trial Court has also not awarded any amount towards the loss of estate and for transportation charges. Therefore sums of Rs.15,000/- and Rs.5,000/- are awarded respectively, under these heads.

Caluculation:

Notional Income = Rs.4,500/-
25% Future Prospects = Rs.1,125/-
Total = Rs.4,500/- + Rs,1,125 = Rs.5,625/-

Multiplier Method:

= Rs.5,625/- * 12 * Multiplier 13 * 1/4 deduction
= Rs.8,77,500/- * 3/4
= Rs.6,58,125/-

S.No	Heads	Amount granted
1.	Loss of pecuniary benefits	Rs.6,58,125/-
2.	Loss of consortium, love and affection	Rs. 40,000/-

S.No	Heads	Amount granted
3.	Loss of estate of the deceased	Rs. 15,000/-
4.	Funeral Expenses	Rs. 5,000/-
5.	Transportation Charges	Rs. 5,000/-
Total		Rs. 7,23,125

The awarded amount would carry interest at the rate of 7.5% per annum.

9. In the result,

(i) The appeal is allowed and a sum of Rs.7,23,125/- (Rupees seven lakhs twenty three thousand and one hundred twenty five only) is awarded to the appellants/ claimants as compensation together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit. The National Insurance Company, namely, the second respondent is directed to deposit the enhanced compensation amount along with interest to the credit of M.C.O.P.No.322 of 2007 on the file of the Motor Vehicle Accidents Claims Tribunal, Additional District and Sessions Court, (Fast Track Court No.I) Poonamallee, within a period of two weeks from the date of receipt of a copy of this order.

(ii) The appellants are at liberty to withdraw the entire enhanced compensation amount as per the apportionment given by the trial Court.

(iii) The claimants are directed to pay necessary court fee for the enhanced amount of the award amount. No costs.

(iv) No order as to costs.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

mbi/dna

To

The Motor Accident Claims Tribunal ,
Additional District & Sessions Judge,
Fast Track Court I, Poonamallee.

Copy to

The section officer,

VR Section, High court, Madras

+1cc to Mr.S.Arun Kumar, Advocate SR.No. 77454

+2cc to Mr.J.Mahalingham, Advocate SR.No. 77343