

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10.12.2018

CORAM:
THE HONOURABLE MRS.JUSTICE R. HEMALATHA
C.M.A.No.2029 of 2011

1.Mrs.Manjula
2.Minor.Kavitha
3.Minor.Maheswari
4.Minor.Thanjiappan

... Appellants/Petitioners

..Vs..

1.Kamarudin
2.The Divisional Manager,
The New India Assurance Company Limited,
Vellore.
(R1 Exparte in Lower Court)

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 07.01.2005 in M.C.O.P.No.214 of 2001 on the file of Motor Accidents Claims Tribunal, Tiruvannamalai.

For Appellants : Mrs.M.Malar

For Respondents : R1 - Exparte
Mr.N.Vijayaraghavan for R2

JUDGMENT

The appellants are the claimants in M.C.O.P.No.214 of 2001 on the file of the Motor Accidents Claims Tribunal, Thiruvannamalai. They filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,00,000/- for the death of one Rajendiran, husband of the first claimant and father of the claimants 2 to 4.

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

On 26.06.1999, the deceased Rajendiran was travelling in a car bearing Registration No. T.S.A.9232 along G.S.T road and was proceeding towards Chennai. When the car was nearing Rettai Erikkarai, a speeding lorry bearing Registration No. TN 45 Z 2239 belonging to the first respondent hit the car, as a result of which, the deceased Rajendiran and two others who were travelling in the same car died on the spot.

3.According to the appellants/claimants, the rash and negligent driving of the driver of the lorry bearing

Registration No. TN 45 Z 2239 belonging to the first respondent was the cause of the accident and that since the said vehicle was insured with the second respondent, both of them are jointly and severally liable to pay compensation to them.

4.The first respondent remained absent before the Tribunal and was set ex-parte. The second respondent contested the claim petition by filing a counter. The Tribunal after analysing the evidence on record, awarded a compensation of Rs.2,23,000/- together with interest at the rate of 9% per annum to the appellants/claimants. Not satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have filed the present appeal.

5.Mrs.M.Malar, learned counsel appearing for the appellants would contend that the deceased was a mason aged just 28 years on the date of the accident and that the Tribunal has fixed his income only as Rs.1,500/- per month. She would further contend that when there are four persons depending on his income, the Tribunal has deducted 1/3 of his income towards his personal expenses which cannot be sustained. It is also contended by her that no amount was awarded towards future prospects of the deceased, especially when he was aged only 28 years on the date of the accident.

6.Per contra, Mr.N.Vijayaraghavan, learned counsel appearing for the second respondent would contend that the Tribunal had passed just compensation based on the settled legal principles which were in vogue on the date of passing of the orders and therefore, there is no necessity to upset the orders passed by the Tribunal.

7.A perusal of records shows that the deceased was a mason and therefore, he would have definitely earned a sum of Rs.3,000/- per month. The Tribunal has fixed his income as Rs.1,500/-, which in the opinion of this Court is too meagre. Apart from that, the Tribunal has not added any amount towards future prospects of the deceased. The age of the deceased was 28 years on the date of the accident and as per the decision in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 40% should be added towards future prospects of the deceased. Therefore, Rs.3,000/- + Rs.1,200/- (40% of Rs.3,000/-) = Rs.4,200/-.

8.The proper multiplier to be adopted in the instant case is 17 as per the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The Tribunal has also committed an error in deducting 1/3 towards his personal expenses, especially when there are four persons depending on his income. In the facts and circumstances of the present case, 1/4 alone can be deducted towards the

personal income of the deceased. Thus the loss of dependency is calculated as follows:

$$\begin{aligned} &= \text{Rs.}4,200/- \times 12 \times 17 \times 1/4 \text{ deduction} \\ &= \text{Rs.}8,56,800/- \times 1/4 \text{ deduction} \\ &= \text{Rs.}6,42,600/- \end{aligned}$$

Apart from this amount, the appellants/claimants are entitled to a sum of Rs.40,000/-, Rs.15,000/- and Rs.15,000/- towards loss of consortium, funeral expenses and loss of estate respectively. Thus the compensation awarded to the appellants/claimants under various heads is extracted hereunder:

S. No.	Head	Amount granted
1.	Loss of dependency	Rs.6,42,600/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.7,12,600/-

9. In the result,

(i) The appeal is partly allowed. No costs.

(ii) The compensation amount is enhanced from Rs.2,23,000/- to Rs.7,12,600/-. The appellants/claimants are directed to pay the court fee, if any, within a period of six weeks from today i.e., 10.12.2018 for the enhanced compensation amount and the Registry is directed to draft the decree only after the payment of Court fee.

(iii) The second respondent Insurance Company is directed to pay the enhanced compensation amount together with interest at the rate of 7.5% per annum on Rs.7,12,600/- 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.No.214 of 2001. On such deposit being made by the second respondent, the appellants/claimants are at liberty to withdraw the same after following necessary procedure.

(iv) It is also made clear that since the appeal is filed with a delay of 1140 days, the appellants/claimants are not entitled to any interest for the said period.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Judge,
The Motor Accident Claims Tribunal,
Tiruvannamalai.

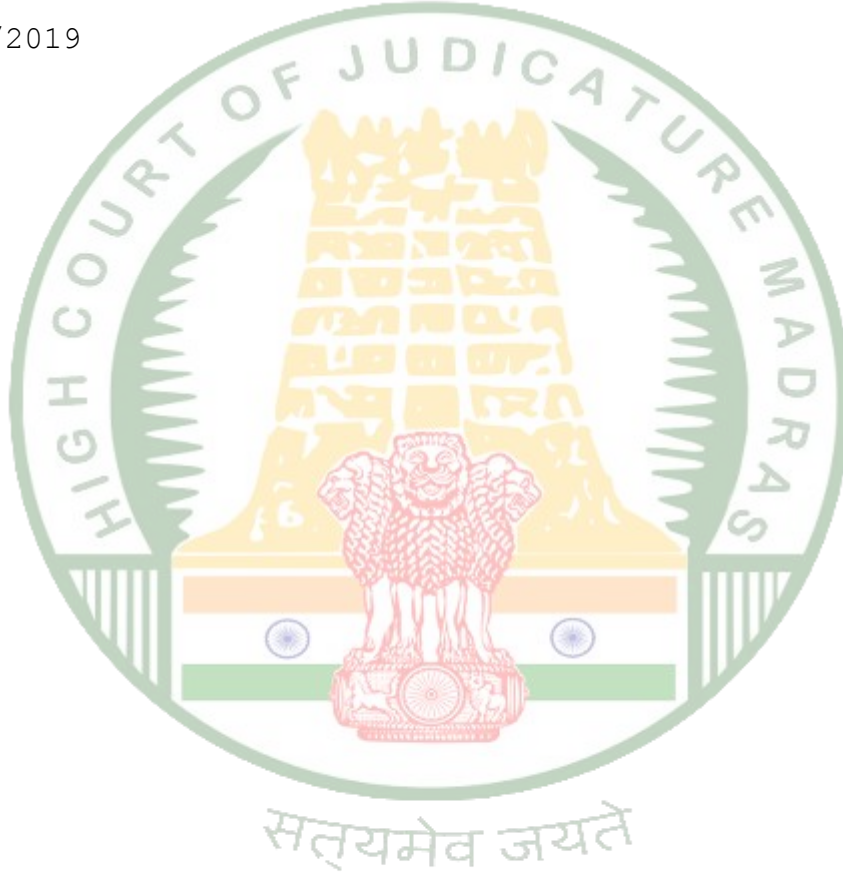
+1cc to Mr. N.Vijayaraghavan, Advocate, S.R.No.85568

+1cc to Mr.M.Malar, Advocate, S.R.No.85280

C.M.A.No.2029 of 2011

SJ(CO)

rrs 24/01/2019



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