

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2088 of 2011

Shantha

... Appellant/Claimant

..Vs..

The Managing Director,
T.N.S.T.C. Ltd.,
Villupuram Divn. III,
Kancheepuram.

...Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 13.12.2007 in M.C.O.P.No.143 of 2005 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Chengalpattu.

For Appellant : Mrs.Y.Jayanthi Bhaskar
for M/s.J.Mahalingam

For Respondent : Mr.K.J.Sivakumar

JUDGMENT

The appellant is the claimant in M.C.O.P.No.143 of 2005 on the file of the Principal District Judge, Chengalpattu. She has filed the above appeal claiming a compensation of Rs.8,00,000/- for the death of her father in a road accident that took place on 16.11.2004.

2.The brief facts of the case of the appellant/claimant is as follows:

On 16.11.2004, the appellant/claimant's father deceased Dharmasivam was riding his two wheeler TVS motorcycle bearing Registration No. TN 22 U 2158 on GST road, Pallavaram. At that time, a speeding bus bearing Registration No. TN 72 N 0759 belonging to the respondent hit the deceased Dharmasivam, as a result of which, he sustained injuries and died on the spot.

3. According to the appellant/claimant, the deceased was aged about 53 years on the date of the accident and was earning a sum of Rs.10,000/- per month. It is also contended by her that the rash and negligent driving of the driver of the bus belonging to the respondent was the cause of accident and therefore, they are liable to pay compensation of Rs.8,00,000/- to her.

4. The learned Principal District Judge, Chengalpattu, after analysing the evidence on record, awarded a compensation of Rs.2,42,000/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit to the appellant/claimant. Aggrieved over the quantum of compensation, the appellant/claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mrs. Y. Jayanthi Bhaskar, learned counsel appearing for the appellant would contend that the appellant/claimant's father was a mason and was earning a sum of Rs.10,000/- per month and that the Tribunal has awarded a very meagre amount of Rs.2,42,000/- as compensation for the death of her father.

6. A perusal of the Judgment passed by the Tribunal shows that the income of the deceased was taken as Rs.3,000/- per month as no documentary evidence was adduced on the side of the appellant/claimant. Since, the accident took place in the year 2004, the notional income of the deceased is fixed at Rs.4,500/- per month. The age of the deceased was 53 years on the date of the accident and as per the decision laid down in National Insurance Co. vs Pranay Sethi and others reported in 2017 (2) TNMAC 601, 10% should be added towards future prospectus of the deceased. Therefore, the monthly income of the deceased with future prospectus is fixed as Rs.4,950/- (Rs.4,500/- + Rs.450/- (10% of Rs.4,500/-)). Since the age of the deceased was 53 years, proper multiplier to be adopted in the instant case is 11 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

7. At this juncture, the learned counsel appearing for the respondent would contend that since there is only one person depending on the deceased, 50% should be deducted towards personal expenses of the deceased. In the decision in National Insurance Co. vs Pranay Sethi and others reported in 2017 (2) TNMAC 601 (cited supra) there is no mention that if there is only one dependent, 50% should be deducted towards personal expenses of the deceased. As far as the present case is concerned, the appellant/claimant is the daughter of the deceased and therefore, 1/3 should be deducted towards personal expenses of the deceased. Thus, loss of dependency is calculated as follows:

= Rs.4,950/- x 12 x 11 x 1/3 deduction
= Rs.6,53,400/- x 1/3 deduction
= Rs.4,35,600/-

8. Apart from the above amount, the appellant/claimant is entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards loss of estate, loss of love and affection and funeral expenses. The details of the amount awarded to the appellant/claimant is as follows:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.4,35,600/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.5,05,600/-

Thus the appellant/claimant is entitled to a sum of Rs.5,05,600/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit. The respondent is directed to deposit the enhanced claim amount (less the amount already deposited) within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the appellant/claimant is at liberty to withdraw the entire amount after following the necessary procedures.

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

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Chengalpattu.

2.The Section Officer,
VR Section,
High Court, Madras(2 copies)

+1cc to Mr.K.J.Sivakumar, Advocate sr.no.80377
+2cc to Mr.J.Mahalingam, Advocate sr.no.80313

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