

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.NO.646 OF 2012

1. Thangamani
2. Achudha
3. Madesh
4. Govindaraj
5. Pachiappan
6. Nanjammal

...Appellants/Petitioners

Vs.

1. S.Arumugam
2. P.Venkatachalam
3. M/s. ICICI Lombard General Insurance Co. Ltd.
256, 258, J.B. Towers,
1st Floor, Sathy Road
Erode 638 003

...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act 1988, for enhancement of compensation against the Fair and Decreetal order dated 08.07.2011 passed in M.C.O.P. No.491 of 2009 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Erode.

For Appellants : Mr.S.Sriram
for Mr.K.Govi Ganesan

For Respondents : Mrs. R.Sreevidhya

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JUDGMENT

The appellants are the claimants in M.C.O.P. No.491 of 2009 filed under Section 166(A) of the Motor Vehicles Act, 1988, on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Erode seeking compensation of Rs.5,00,000/- for the death of Palani, the husband of the first claimant, father of claimants 2 to 4 and the son of claimants 5 & 6.

2. The brief facts of the case of the claimants are as follows:

On 15.01.2009, the deceased Palani was riding a two wheeler TVS 50 XL, bearing Registration No.TN-33-B-8617 on Erode-Sathy road. At about 9 a.m, when he was nearing Kurraithayirpalayam bus stand, a speeding bus, bearing Registration No.TN-36-W-2799, hit the two wheeler, as a result of which, he died on the spot. The claimants further contended that the rash and negligent driving of the driver of the bus, bearing Registration No.TN-36-W-2799, belonging to the second respondent, was the cause of accident and that since the bus was insured with the third respondent / M/s.ICICI Lombard General Insurance Co. Ltd., they are jointly and severally liable to pay a compensation to them. The Tribunal, after analysing the evidence on record, awarded a compensation of Rs.4,43,800/- together with interest at the rate of 7.5% 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 under Section 173 of Motor Vehicles Act 1988.

3. Mr.S.Sriram, learned counsel appearing for the appellants/claimants would contend that, the Tribunal, while calculating the loss of dependency, failed to add any amount towards future prospects and that a very meagre amount of Rs.5,000/- was awarded towards transportation. He also contended that no amount was awarded towards the loss of estate. The award passed by the Tribunal under various heads is extracted hereunder:

Sl.No.	Head	Amount (Rs.)
1.	Loss of Income	3,58,800/-
2.	Loss of consortium	25,000/-
3.	Loss of love and affection	50,000/-
4.	Cremation expenses	5,000/-
5.	Transport charges	5,000/-
	Total	4,43,800/-

4. The Tribunal has fixed the daily income of the deceased as Rs.125/-. The contention of the appellants/claimants, is that the deceased was an agricultural Coolie on the date of accident and was earning a sum of Rs.5,000/- per month. Since the accident took place in the year 2009, the notional income

of the deceased is fixed as Rs.4,500/- per month in the absence of proof of evidence to show the actual income received by the deceased on the date of accident. As per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 25% of the income has to be added towards the future prospects since the age of the deceased was 44 years on the date of accident. As there are 6 dependents, $\frac{1}{4}$ is deducted towards personal expenses of the deceased and the proper multiplier to be adopted in the instant case as per the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 is 14 for calculating the loss of dependency. Thus, the loss of dependency is Rs.4,218 x 12 x 14 = Rs.7,08,624/-. Apart from the above amount, as per the decision rendered in National Insurance Co. vs Pranay sethi and others (cited supra), the appellants are entitled to a sum of Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Thus, the compensation amount is enhanced as detailed below:

Calculation:

Notional Income = Rs.4,500/-

25% Future Prospects = Rs.1,125/-

Total = Rs.4,500/- + Rs.1,125/- = Rs.5,625/-

= Rs.5,625/- less $\frac{1}{4}$ deduction = Rs.4,218/-

Multiplier Method:

= Rs.4,218/- * 12 * Multiplier 14

= Rs.7,08,624/-

S.No	Head	Amount granted (Rs.)
1.	Loss of dependency	7,08,624/-
2.	Loss of consortium	40,000/-
3.	Funeral expenses	15,000/-
5.	Loss of estate	15,000/-
Total		7,78,624/-

5. In the result, the appeal filed by the appellants/claimants is partly allowed and the compensation amount is enhanced from Rs.4,43,800/- to Rs.7,78,624/- (Rupees Seven Lakhs Seventy Eight Thousand Six Hundred and Twenty Four only), which shall carry an interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit. M/s. ICICI Lombard General Insurance Co. Ltd. is directed to deposit the enhanced award amount, less the deposit already made by them, within a period of four weeks from the date of receipt of a copy of this order.

6. Since the amount is enhanced to Rs.7,78,624/-, the appellants/claimants are directed to pay the balance court fee (if any) on or before 03.01.2019 and the Registry is directed to draft the decree only after receiving the balance Court fee from the appellants/claimants.

7. With the above observations, the Civil Miscellaneous appeal is disposed of. No costs.

bga

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Erode.

+1cc to Mr.K.Govi Ganesan, Advocate, SR.No.87129

+1cc to Mr.R.Sreevidhya, Advocate, SR.No.88024

C.M.A.NO.646 OF 2012

Kak(20/05/2019)

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