

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.01.2019
CORAM
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
C.M.A.NO.1181 OF 2006

1. G.Shanthi
2. Bharat G.Sundaram(Minor)
rep. By mother & natural Guardian G.Shanthi
...Appellants/Petitioners 1 & 2

Vs.

1.K.Sivagamasundari
2.United India Insurance Co. Ltd.
... Respondents 1 & 2/Respondents
3.Tmt.Saroja
4.Sivashanmugam
...Respondents 3 & 4/Petitioner 3 & 4

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, to quash the award and decree passed in M.C.O.P. No.3971 of 1997 by the learned Chief Judge of Small Causes Court, Motor Accident Claims Tribunal, Chennai, dated 28.02.2002.

For Appellant : Mr.SN.Narasimhulu.
For Respondents : Mr.A.Rajaguru
for Mr.T.D.Vasu for R2
R1 - No appearance
R3 & R4 - Not ready.

JUDGMENT

The appellants are the claimants 1 and 2 in M.C.O.P. No.3971 of 1997 on the file of the Chief Judge, Court of Small Causes, Chennai. The appellants along with respondents 3 and 4 filed claim petition under Section 166 of Motor Vehicles Act, read with Rule 3 of M.A.C.T Rules, seeking compensation of Rs.11,12,000/- for the death of one P.S.Gnanasundaram, husband of the first claimant and father of the second claimant and son of the respondents 3 and 4, in a road accident that took place on 12.07.1997.

2. According to the appellants / claimants, on 12.07.1997, the deceased P.G.Gnanasundaram was riding his motor cycle bearing registration No.TN-02-D-1714 near Meenambakkam airport and at about 12.30 P.M., a speeding tanker lorry bearing registration No.TN-09-1497 belonging to the first respondent,

hit the motor cycle, as a result of which, the deceased fell down and sustained injuries all over his body and though he was rushed to a hospital, he succumbed to injuries on 03.08.1997. According to the claimants, the rash and negligent driving of the driver of the lorry bearing registration No.TN-09-1497 was the cause of the accident and that since the said tanker lorry was insured with the second respondent, both of them are jointly and severally liable to pay compensation of Rs.11,12,000/- to them.

3. The owner of the tanker lorry, remained absent before the tribunal and therefore, he was set exparte. The second respondent/ The United India Insurance Company Limited contested the claim petition.

4. The learned Chief Judge, Court of Small Causes, Chennai, after analysing the evidence on record, awarded a compensation of Rs.6,60,000/- together with interest at the rate of 9% per annum to the claimants. The award passed by the Tribunal under various heads is extracted hereunder.

Sl.No.	Head	Amount (Rs.)
1.	Loss of dependency (Rs.36,000/- X 13)	4,80,000/-
2.	Pain and sufferings	10,000/-
3.	Loss of consortium, loss of love and affection and funeral expenses	15,000/-
4.	Loss of estate	15,000/-
5.	Medical expenses	1,40,000/-
	Total	6,60,000/-

Not satisfied with the quantum of compensation awarded by the tribunal, the claimants 1 and 2 have filed the present appeal under Section 173 of the Motor Vehicles Act 1988.

5.Mr.SN.Narasimhulu, learned counsel appearing for the appellant would contend that though four persons were depending on the income of the deceased, the tribunal has deducted 1/3 towards the personal expenses of the deceased and did not award any amount towards future prospects.

6. per contra, Mr.A.Rajaguru, learned counsel appearing for the second respondent would contend that the tribunal after considering various aspects, had awarded a just compensation and therefore, the same need not be disturbed at this juncture.

7. A perusal of the orders passed by the tribunal shows that the a sum of Rs.4,80,000/- was awarded towards loss of income. Though the tribunal rightly fixed the monthly income of the deceased as Rs.4,000/-, did not add any amount towards future prospects. As per the decision rendered 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 since the deceased was aged 38 years on the date of accident. Therefore, a sum of Rs.5,600/- (Rs.4,000 + 1600=5,600) is taken up for calculating the loss of dependency. Since four persons were depending on the income of the deceased, one fourth alone can be deducted towards personal expenses of the deceased, which would come to Rs.4,200/- (Rs.5,600-1400=4,200)

8. As per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the proper multiplier to be adopted in the instant case is 15. Therefore, the loss of dependency is Rs.4200 x 12 x 15 = Rs.7,56,000/-. Apart from the abovesaid amount, the claimants are entitled to a sum of Rs.40,000/- towards loss of love and affection and Rs.15,000/- towards the funeral expenses and Rs.15,000/- towards loss of estate. The appellants/claimants have produced medical bills to the tune of Rs.1,40,000/- and in fact this amount has been awarded to the claimants by the tribunal. After adding a sum of Rs.1,40,000/- towards medical expenses, a sum of Rs.9,66,000/- is awarded to the claimants. Thus, the compensation amount is enhanced as detailed below:
Calculation:

Notional Income = Rs.4,000/-
40% Future Prospects = Rs.1,600/-
Total = Rs.4,000/- + Rs,1,600 = Rs.5,600/-

Multiplier Method:

= Rs.5,600/- * 12 * Multiplier 15 - 1/4 deduction
= Rs.10,08,000/- less Rs.2,52,000/- (1/4th)
= Rs.7,56,000/-

S.No	Head	Amount granted (Rs.)
1.	Loss of dependency	7,56,000/-
2.	Loss of love and affection	40,000/-
3.	Funeral expenses	15,000/-
4.	Loss of estate	15,000/-
5.	Medical Bills	1,40,000/-
Total		9,66,000/-

9. In the result,

(i) The appeal filed by the appellants/claimants is partly allowed. No costs.

(ii) The compensation amount awarded by the tribunal is enhanced from Rs.6,60,800/- to Rs.9,66,000/- (Rupees Eight lakhs eighty five thousand only). Since 9% rate of interest awarded by the tribunal seems to be on the higher side, the enhanced amount shall carry interest only at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) M/s. United India Insurance Co. Ltd., is directed to pay a compensation of Rs.9,66,000/- to the appellants/claimants, less the deposit already made by them, within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the second respondent, the claimants are entitled to withdraw the same as per the apportionment made by the tribunal, after following due process of law.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

bga

To

The Chief Judge,
Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.

Copy to:

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

+1cc to Mr.SN.Narasimhulu, Advocate sr.5880

+1cc to Mr.T.D.Vasu, Advocate sr.5873

C.M.A.NO.1181 OF 2006

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