IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.11.2019
CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.Nos.1918 and 1919 of 2007

C.M.A.No.1918 of 2007:

S.T.Jaya
... Appellant/1st Petitioner

.Vs.

1.M.Sengathirselvan

2.M/s.United India Insurance Company Limited,
Branch Office,
146, Kumar Complex,
Tiruchengode - 637 211,
Salem District.

3.S.T.Bhuvana

4.A.Ramasundaram

5.Kannammal ... Respondents/ respondents1&2 & Petitioners 2 to 4

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 25.06.2003 passed in M.C.O.P.No.1601 of 2000 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Salem.

Appellant	:	Mr.N.Manokaran
RR1, 3 to 5	:	No appearance
R2	:	Mr.C.Paranthaman

C.M.A.No.1919 of 2007:
S.T.Jaya ... Appellant/1st Petitioner

.Vs.

1.M.Sengathirselvan

2.M/s.United India Insurance Company Limited,
Branch Office,
146, Kumar Complex,
Tiruchengode - 637 211,
Salem District.

3.S.T.Bhuvana ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 25.06.2003 passed in M.C.O.P.No.1602 of 2000 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Salem.

Appellant : Mr.N.Manokaran
RR1 and 3 : No appearance
R2 : Mr.C.Paranthaman

C O M M O N J U D G M E N T

The appellant in both the appeals is one of the claimants in M.C.O.P.Nos.1601 and 1602 of 2000 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Salem. The claim petitions are filed under Section 166 of the Motor Vehicles Act, 1988, seeking compensation for the death of one Gomathy and one Thiruvengadam in a road accident on 06.08.2000. The deceased Gomathy is the mother of claimants 1 and 2 and daughter of the claimants 3 and 4 in M.C.O.P.No.1601 of 2000. The deceased Thiruvengadam is the father of claimants 1 and 2 in both M.C.O.Ps.

2. The case of the claimants is that on 06.08.2000, the deceased Thiruvengadam was riding his TVS Suzuki Motor Cycle bearing Registration No. TN 27 L 8820 near Periyar University with his wife, deceased Gomathy as pillion rider and at about 1.45 P.M., a speeding bus bearing Registration No. TN 27 L 5646, hit the motorcycle as a result of which, both Thiruvengadam and Gomathy fell down and died on the spot. According to the claimants, the rash and negligent driving of the driver of the bus belonging to the first respondent and insured with the second respondent / United India Insurance Company Limited was the cause of the accident and therefore the owner and the insurer of the bus are jointly and severally liable to pay compensation.

3. The first respondent in both the appeals remained absent before the Tribunal and therefore, he was set exparte. The second respondent / United India Insurance Company Limited contested the claim petitions on all the grounds available to the insured. The learned Chief Judicial Magistrate / Motor Accidents Claims Tribunal while awarding compensation of Rs.1,00,000/- and Rs.2,00,000/- together with interest at the rate of 9% per annum for the death of Gomathy and Thiruvengadam respectively and further held that,

(i) The claimants 3 and 4 in M.C.O.P.No.1601 of 2000, who are the parents of the deceased Gomathy were not depending on the income of their daughter and therefore they are not entitled to get any compensation.

(ii) Multiplier method need not be adopted in the instant case, since the claimants 1 and 2 in both the M.C.O.Ps got married subsequent to the death of their parents and they were not depending on their income.

Aggrieved over the orders passed by the Tribunal, the first claimant in both the M.C.O.Ps has filed the present appeals.

4. Mr.N.Manokaran, learned counsel appearing for the appellant / first claimant contended that though the deceased Thiruvengadam was earning a sum of Rs.9,987/- as per the salary certificate (Ex.P9) and his wife, deceased Gomathy was a Home Maker and also a tailor by profession, the Tribunal did not adopt multiplier method while calculating the loss of dependency, especially when the claimants 1 and 2 in both M.C.O.Ps were not married on the date of accident.

5. Per contra, Mr.C.Paranthaman, learned counsel appearing for the second respondent / United India Insurance Company Limited contended that the Tribunal after considering all the aspects of the case has awarded just compensation and the same need not be disturbed at this stage.

6. At the outset, it may be observed that the claimants 1 and 2 have lost their parents in a road accident.

7. C.M.A.No.1918 of 2007: The contention of the claimants is that the deceased Gomathy was a tailor by profession and was earning a sum of Rs.4,000/- per month. The Tribunal held that since no income proof was filed by the claimants to show that the deceased Gomathy was actually earning a sum of Rs.4,000/- per month and also as she was only a house wife, multiplier method cannot be adopted and awarded a sum of Rs.1,00,000/- to the claimants 1 and 2. This approach of the Tribunal is totally erroneous and perverse, because the role play of a home maker cannot be valued in terms of money since she has to maintain the entire family and two children, who were not married on the date of accident. In such cases it is mandatory on the part of the Tribunal to take the opportunity cost for the services rendered by a home maker. In fact, the term house-wife was substituted by the term Home-maker solely keeping in mind the value addition of a Home-maker to the family. The claimants 1 and 2 in both M.C.O.Ps married subsequently cannot be a ground to deny just compensation to the children of the deceased.

8. The notional monthly income can be fixed as Rs.4,000/- considering the year of accident. Since there are more than two dependents depending on the income of the deceased Gomathy, 1/3 is deducted from her income towards personal expenses and 40% should be added towards future prospects as per the Constitution Bench decision in National Ins. Co. Vs. Pranay Sethi reported in 2017(2)TNMAC 609 (SC). As the age of the deceased was 40 years on the date of the accident, the

proper multiplier to be adopted in the instant case is 15 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The "loss of dependency" is calculated as follows:

Calculation:

Notional Income = Rs.4,000/-
40% Future Prospects = Rs.1,600/-
Total = Rs.4,000/- + Rs.1,600/- = Rs.5,600/-
After 1/3 deduction = Rs.3,733/-

Loss of dependency:

= Rs.3,733/- x 12 x 15
= Rs.6,71,940/-

9. Apart from the above said amount, the claimants are 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" respectively. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.6,71,940/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.7,41,940/-

10. Thus the compensation awarded by the Tribunal in M.C.O.P.No.1601 of 2000 is enhanced from Rs.1,00,000/- to Rs.7,41,940/- which would carry interest at the rate of 7.5% per annum. Another aspect in the instant case is that the Tribunal had not awarded any amount towards parents of the deceased Gomathy. They also lost their daughter in a road accident and they must be adequately compensated. Therefore, the claimants 3 and 4 in M.C.O.P.No.1601 of 2000, who are the parents of the deceased Gomathy, the respondents 4 and 5 in C.M.A.No.1918 of 2007 are entitled to a sum of Rs.1,00,000/- each as compensation towards the death of their daughter Gomathy from the total compensation of Rs.7,41,940/-

11. C.M.A.No.1919 of 2007: In the instance case, the deceased Thiruvengadam was aged 48 years as per the post mortem report (Ex.P7). The contention of the claimants is that the deceased Thiruvengadam was working for a Regional Provident Fund Office, Salem, earning a sum of Rs.9,987/- per month. In order to substantiate their contention, the claimants produced salary certificate of the deceased Thiruvengadam (Ex.P9) and therefore the monthly income is fixed as Rs.9,987/-. Since there are two dependents depending on the income of the deceased Thiruvengadam, 1/3 is deducted

from his income towards personal expenses and 30% is added towards future prospects as per the Constitution Bench decision in National Ins. Co. Vs. Pranay Sethi reported in 2017(2)TNMAC 609 (SC). As the age of the deceased was 48 years on the date of the accident, the proper multiplier to be adopted in the instant case is 13 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The "loss of dependency" is calculated as follows:

Calculation:

Monthly Income = Rs.9,987/-
30% Future Prospects = Rs.2,996/-
Total = Rs.9,987/- + Rs.2,996/- = Rs.12,983/-
After 1/3 deduction = Rs.8,655/-

Loss of dependency:

= Rs.8,655/- x 12 x 13
= Rs.13,50,180/-

12. Apart from the above said amount, the appellants / claimants are 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" respectively. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.13,50,180/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.14,20,180/-

Thus the compensation awarded by the Tribunal in M.C.O.P.No.1602 of 2000 is enhanced from Rs.2,00,000/- to Rs.14,20,180/- which would carry interest at the rate of 7.5% per annum.

13. The total compensation to the daughters comes to Rs.19,62,120/- (Rs.5,41,940/- + Rs.14,20,180/-) and the same is apportioned as follows:

(i) Claimants 1 and 2 are entitled to a sum of Rs.9,81,060/- each with proportionate costs and interest.

(ii) Claimants 3 and 4 in M.C.O.P.No.1601 of 2000, who are the parents of the deceased Gomathy are entitled to a sum of Rs.1,00,000/- each from the total compensation awarded in C.M.A.No.1918 of 2007.

14. In the result,

C.M.A.No.1918 of 2007:

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,00,000/- to Rs.7,41,940/-.

(iii) The claimants are directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The United India Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.7,41,940/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.1601 of 2000 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Salem within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the claimants are at liberty to withdraw the same as per the apportionment made by this Court, after following due process of law.

C.M.A.No.1919 of 2007:

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,00,000/- to Rs.14,20,180/-.

(iii) The claimants are directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The United India Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.14,20,180/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.1602 of 2000 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Salem within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the claimants are at liberty to withdraw the same as per the apportionment made by this Court, after following due process of law.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Salem.

Copy to:
The Section Officer, VR Section, High Court,Madras.

+2ccs to Mr.N.Manokaran , Advocate SR.No. 91299,91300
+2ccs to Mr.C.Paranthaman , Advocate SR.No. 91209,91208

C.M.A.Nos.1918 and 1919 of 2007

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