

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1093 of 2013

1.Boopathy
2.Latha

... Appellants/Petitioner

vs.

1. Mohan

2. Royal Sundaram General Insurance Co. Ltd.,
1st Floor, Adyar,
Chennai. ... Respondents/Respondents
(R1-exparte)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 20.12.2012 made in M.A.C.T.O.P.No.5834 of 2012 on the file of the Motor Accidents Claims Tribunal/IV Court of Small Causes, Chennai.

For Appellants : Mrs.M.Malar

For Respondents : Mr.N.Vijayaraghavan for R2
No Appearance for R1

JUDGMENT

The appellants are the claimants in M.A.C.T.O.P.No.5834 of 2012 on the file of the Motor Accidents Claims Tribunal/IV Court of Small Causes, Chennai. They filed the claim petition under Section 166(3) of the Motor Vehicles Act, 1988 seeking compensation of Rs.12,00,000/- for the death of their son Bharathi, in a road accident on 07.06.2011.

2. The case of the claimants is that on 07.06.2011, the deceased Bharathi was riding his motor cycle bearing Registration No.TN-19-C-8974 along G.S.T.Road, near Guduvancheri and at about 17.30 hours, a speeding lorry bearing Registration No.TN-22-BZ-8629 hit the deceased, as a result of which, he sustained fatal injuries and died in the hospital on the same date.

3. According to the claimants, the accident took place due to the rash and negligent driving of the driver of the lorry bearing Registration No.TN-22-BZ-8629 belonging to the first respondent and that since the said lorry was insured with the second respondent, the owner and the insurer of the lorry are jointly and severally liable to pay compensation.

4. The first respondent remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, Royal Sundaram General Insurance Co. Ltd., contested the claim petition on all the grounds available to the insured and the learned Motor Accidents Claims Tribunal / IV Court of Small Causes, Chennai after analysing the evidence on record, awarded a compensation of Rs.5,85,000/- together with interest at the rate of 7.5% per annum to the claimants. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mrs.M.Malar, learned counsel appearing for the appellants / claimants contended that though the claimants have specifically contended that the deceased was earning a sum of Rs.7,000/- per month as a Maintenance Operator in a private concern, the Tribunal has fixed the notional income of the deceased only as Rs.6,000/- per month.

6. Per contra, Mr.N.Vijayaraghavan, learned counsel appearing for the 2nd respondent / Insurance Company contended that the Tribunal has awarded just compensation and therefore, the same need not be disturbed.

7. It is seen from the records that the deceased was working as a Maintenance Operator in a Private concern and was aged 23 years on the date of accident. Therefore, the notional income fixed by the Tribunal at Rs.6,000/- per month is meagre and hence, a sum of Rs.7,000/- per month is taken up for calculating loss of dependency. As per the decision of the Supreme Court of India in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC), 40% should be added towards future prospects of the deceased. Since the deceased died as a bachelor, 1/2 of his income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 18 as per the decision rendered in Sarlaverma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.7,000/-
40% Future Prospects = Rs.2,800/-
Total = Rs.7,000/- + Rs.2,800/- = Rs.9,800/-
After 1/2 deduction = Rs.4,900/-

Loss of dependency
= Rs.4,900/- x 12 x 18
= Rs.10,58,400/-

8. 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, as per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC). The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this court
1.	Loss of dependency	Rs.10,58,400/-
2.	Loss of estate	Rs. 15,000/-
3.	Loss of love and affection	Rs. 40,000/-
4.	funeral expenses	Rs. 15,000/-
	Total	Rs.11,28,400/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.5,85,000/- to Rs.11,28,400/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.5,85,000/- to Rs.11,28,400/-.

(iii) The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The 2nd respondent / Royal Sundaram General Insurance Co. Ltd., is directed to deposit the enhanced compensation amount i.e., Rs.11,28,400/- (less the amount already deposited if any) 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.A.C.T.O.P.No.5834 of 2012 on the file of the Motor Accidents Claims Tribunal/IV Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment.

(v) On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the Orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Motor Accidents Claims Tribunal,
IV Court of Small Causes,
Chennai.

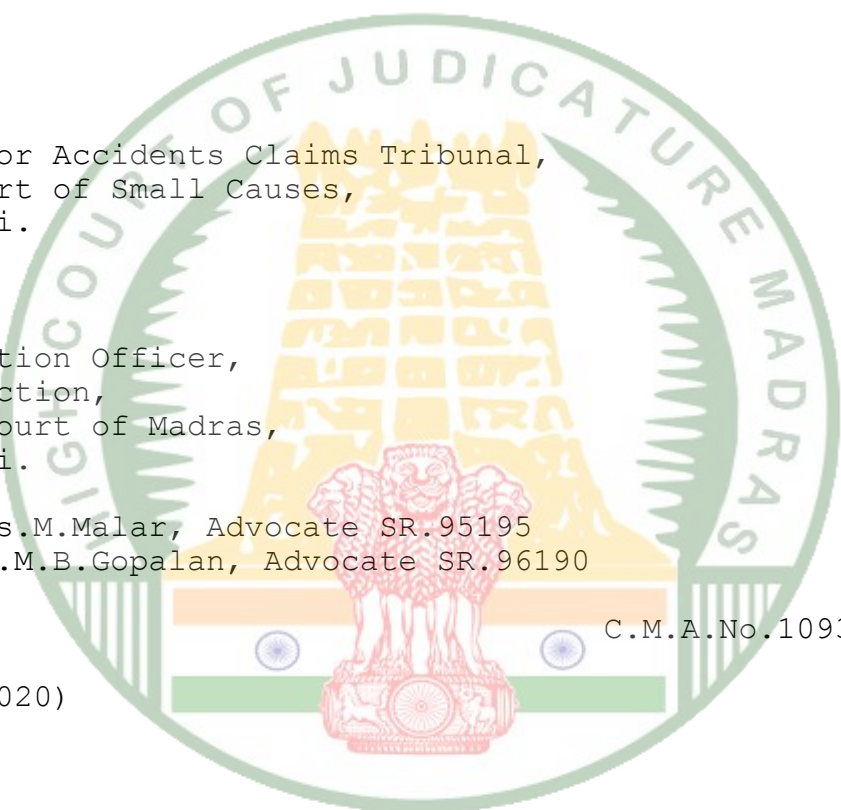
Copy to:

The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

+1cc to M/s.M.Malar, Advocate SR.95195
+1cc to Mr.M.B.Gopalan, Advocate SR.96190

C.M.A.No.1093 of 2013

GMR(CO)
CB(27/02/2020)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. The gopuram is flanked by two green trees. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a green arc around the top. At the bottom, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script. The entire seal is overlaid with a large, semi-transparent "WEB COPY" watermark in the center of the page.

सत्यमेव जयते

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