

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.178 of 2008

1.Elumalai

2.Alamelu

... Appellants/Petitioners

vs.

1.Babu

2.The Branch Manager,
The Oriental Insurance Co. Ltd.,
Thiruvannamalai.

3.Indira

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 27.09.2006 in M.C.O.P.No.407 of 2005 on the file of the Motor Accident Claims Tribunal / District Court, Tiruvannamalai.

Appellants : Mrs.M.Malar

R1 : Unclaimed

R2 : Mr.Elveera Ravindran

R3 : No appearance

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.407 of 2005 on the file of the Motor Accident Claims Tribunal / District Court, Tiruvannamalai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the death of their father Varadhapa Naicker in a road accident on 23.09.2004.

2. The case of the claimants in nutshell is as follows:

On 23.09.2004, the deceased was a pillion rider in a motorcycle bearing Registration No. TN 31 D 6324 on Kanji Road, Tiruvannamalai and at about 09.30 a.m, the rider of the motorcycle rode the vehicle rashly and negligently, as a result of which, the deceased fell down and sustained grievous injuries and died.

3. According to the claimants, the rash and negligent riding of the rider of the two wheeler belonging to the first respondent was the cause of the accident and that since the said two wheeler was insured with the Oriental Insurance Company Limited, the owner and the insurer of the two wheeler are jointly and severally liable to pay compensation.

4. The third respondent (daughter of the deceased) remained absent before the Tribunal and therefore, she was set ex-parte. The second respondent / Oriental Insurance Company Limited contested the claim petition on all the grounds available to the insured. After full contest, the learned District Judge / Motor Accident Claims Tribunal, Tiruvannamalai dismissed the entire claim petition on the following grounds:

I. The injuries sustained by the deceased Varadapa Naicker are simple in nature.

II. The claimants did not adduce any evidence to show that the deceased Varadapa Naicker sustained a fracture of left leg bone as contended by them.

III. No medical records were produced for the treatment taken by the deceased Varadapa Naicker.

Aggrieved over the orders passed 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 postmortem certificate (Ex.P3) shows that the deceased Varadapa Naicker died of Septicemia caused due to complication of injuries sustained by him, the Tribunal without considering the same, had erroneously dismissed the entire claim petition. She therefore prayed for awarding compensation to the claimants.

6. Per contra, Mr.Elveera Ravindran, learned counsel appearing for the second respondent / Insurance Company contended that the Tribunal had rightly dismissed the claim petition, since no medical records were adduced by the claimants to show that the deceased sustained fatal injuries on account of the accident. He therefore prayed for dismissal of the appeal.

7. In the instant case, the claimants have filed a copy of the postmortem certificate (Ex.P3) which clearly shows that the deceased died on 02.10.2004, due to Septicemia. It is pertinent to point out that the accident took place on 23.09.2004 and the deceased died within 10 days of the accident. Since no medical records was adduced by the claimants, this Court directed the Inspector of Police,

Tiruvannamalai Taluk Police Station to produce the Case Diary pertaining to Cr.No.876 of 2004. Accordingly, the Case Diary was produced before this Court. A perusal of the Case Diary shows that initially First Information Report was registered under Sections 279, 337 IPC which was later altered to Sections 279, 304 A IPC after the death of Varadapa Naicker. It is also seen that the final report was filed based on the postmortem certificate. A perusal of the records shows that the deceased sustained injuries on his right leg ankle measuring 4 x 3 x 1.5 cms and on his right feet measuring 5 x 2 x 5 cms. He was admitted in the Government Hospital at Tiruvannamalai and subsequently died on 02.10.2004, due to Septicemia. In the facts and circumstances, it has to be held that death was the proximate cause of the injuries sustained by the deceased in the road accident. The Tribunal without considering all these aspects dismissed the claim petition and the same cannot be sustained.

8. The contention of the claimants is that the deceased was an agriculturist, earning a sum of Rs.6,000/- per month and was aged 65 years on the date of the accident. The accident took place in the year 2004 and therefore the notional monthly income of the deceased is fixed as Rs.6,000/-. In the decision in New India Assurance Co. Ltd. Vs. Vinish Jain and others reported in 2018 (1) TN MAC 365 (SC) the Hon'ble Supreme Court held that where the claimants are majors and had their own source of income, 50% deduction towards personal expenses is called for and the proper multiplier to be adopted in the instant case is '7' as per the decision rendered in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The calculation towards loss of dependency is as follows:

Calculation

Notional Income = Rs.6,000/-
After 1/2 deduction = Rs.3,000/-

Loss of dependency
= Rs.3,000/- x 12 x 7
= Rs.2,52,000/-

9. 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.2,52,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.3,22,000/-

10. In the result,

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

(ii) The appellants / claimants are directed to pay 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 receipt of the Court fee.

(iii) The first respondent and second respondent / Oriental Insurance Company Limited are directed to deposit the compensation amount i.e., Rs.3,22,000/- 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.407 of 2005 on the file of the Motor Accident Claims Tribunal / District Court, Tiruvannamalai within a period of four weeks from the date of receipt of a copy of this order.

(iv) The first & second appellants and third respondent are entitled to a sum of Rs.1,07,333/- each with costs and interest and they are at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

mtl

To

The Motor Accidents Claims Tribunal,
The District Judge,
Tiruvannamalai.

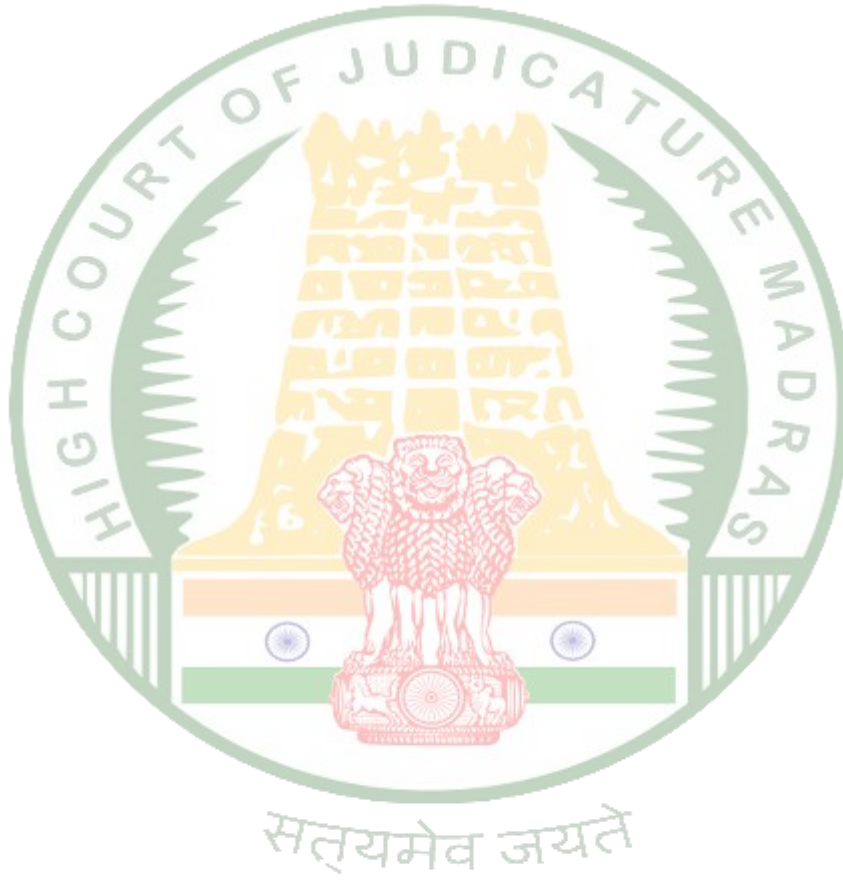
Copy To
The Section Officer,
V.R. Section, High Court, Madras

+1cc to Mrs.M.Malar, Advocate SR.No.97681

+1cc to Mr.Elveera Ravindran, Advocate SR.No.97118

CMA.No.178 of 2008

BS (CO)
GMY (22/07/2020)



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