

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1100 of 2013

1.G.Rani
2.G.Mani
3.V.Sasirekha
4.C.Mangammal

... Appellants/Petitioners
vs.

1.M/s.Annamalai Agencies,
No.14, Nehru Stadium,
Coimbatore.
(R1 Given Up)

2.The New India Assurance Company Limited,
No.19, Officer's Line,
Opposite to Lakshmi Theatre,
Vellore Town.

3.V.Mathivanan
(R3 was set exparte in the trial Court ...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 29.11.2010 in M.C.O.P.No.611 of 2007 on the file of the Motor Accident Claims Tribunal / Principal District Court, Vellore.

Appellant: Mr.R.Nalliyappan
R1 : (Given Up)
R2 : Mr.G.Padmanabhan
R3 : Ex parte

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J U D G M E N T

The appellants are the claimants in M.C.O.P.No.611 of 2007 on the file of the Motor Accident Claims Tribunal / Principal District Court, Vellore. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.18,00,000/- for the death of one Govindasamy, husband of the first claimant, father of the claimants 2 and 3 and son of the fourth claimant in a road accident on 12.05.2007.

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

On 12.05.2007, the deceased was driving his auto towards Sathuvachari along Katpadi Road and at about 03.50 p.m, a speeding lorry bearing Registration No. TN 37 A 7400 hit the auto, as a result whereof, the auto toppled and the deceased Govindasamy sustained fatal injuries and died on the spot.

3. According to the claimants, the rash and negligent driving of the driver of the lorry belonging to the first and third respondents was the cause of the accident and that since the said lorry was insured with the second respondent / The New India Assurance Company Limited, the owner and the insurer of the lorry are jointly and severally liable to pay compensation.

4. The third respondent remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent / The New India Assurance Company Limited, contested the claim petition on all the grounds available to the insured. The learned Principal District Judge / Motor Accident Claims Tribunal, Vellore after analysing the evidence on record, awarded a compensation of Rs.3,75,000/- 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. Heard Mr.R.Nalliyappan, learned counsel appearing for the appellants and Mr.G.Padmanabhan, learned counsel appearing for the second respondent. No appearance on behalf of the first and third respondents.

6. In the claim petition, it is contended that the deceased was owning an auto, earning a sum of Rs.9,000/- per month. In the absence of income proof, the Tribunal fixed the notional income of the deceased as Rs.4,000/- per month. It is pertinent to point out that the accident took place in the year 2007 and in the facts and circumstances, this Court is of the opinion that fixing a sum of Rs.7,500/- as notional monthly income of the deceased would meet the ends of justice. The Tribunal did not award any amount towards "future prospects" of the deceased. Though it is contended in the claim petition that the age of the deceased was 52 years, the Tribunal based on the postmortem certificate (Ex.P3), fixed the age of the deceased as 54 years on the date of the accident and the same is upheld. 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, 10% should be added towards future prospects of the deceased. Since there are four dependents, 1/3rd of the deceased's income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 11 as per the decision rendered in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.7,500/-
10% Future Prospects = Rs.8,250/-
After 1/3 deduction = Rs.5,500/-

Loss of dependency

= Rs.5,500/- x 12 x 11
= Rs.7,26,000/-

7. 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 consortium" 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.7,26,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.7,96,000/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.3,75,000/- to Rs.7,96,000/- which would carry interest at the rate of 7.5% per annum.

9. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.3,75,000/- to Rs.7,96,000/-.

(iii) 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 after receipt of the Court fee.

(iv) The second respondent / The New India Assurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.7,96,000/- (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.611 of 2007 on the file of the Motor Accident Claims Tribunal / Principal District Court, Vellore within a period of four weeks from the date of receipt of a copy of this order.

(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(CS IV)

//True Copy//

Sub Assistant Registrar

mtl

To

The Motor Accidents Claims Tribunal,
The Principal District Judge,
Vellore.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.P.G.Padmanabhan , Advocate SR.No. 95746

+1cc to Mr.R.Nalliappan , Advocate SR.No. 95436

C.M.A.No.1100 of 2013

A.SK(01/10/2020)

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