

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2 of 2008

1.Thavamani
2.Ayyavu
3.Madheswari ... Appellants/Petitioners

vs.

1. N.Manickam
2. New India Assurance Company Limited,
Ram Complex, 29, Paramathi Road,
Namakkal.
3.M.S.Selvam
4. National Insurance Co. Ltd.,
Divisional Office,
74/A, Paramathi Road,
Namakkal. ...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and award dated 27.04.2006 made in M.C.O.P.No.483 of 2003 on the file of the Motor Accidents Claims Tribunal/Additional District Judge (Fast Track Court No.2), Salem.

For Appellants : Mrs.S.Geetha

For Respondents : Mrs.R.Sreevidhya for R2
Mr.S.Arunkumar for R4
No Appearance for R1 & R3

JUDGMENT

The appellants are the claimants in M.C.O.P.No.483 of 2003 on the file of the Motor Accidents Claims Tribunal/Additional District Judge(Fast Track Court No.2), Salem. 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 one Raja @ Venkatesan, son of the claimants 1 and 2 and brother of the claimant 3 in a road accident on 07.01.2003.

2. The case of the claimants is that on 07.01.2003, the deceased Raja @ Venkatesan was a pedestrian wanting to cross on Thiruvakoundanur suburban Road, Salem and at about 10.30 a.m., a speeding car, bearing Registration No.TN-28-S-6269 hit the deceased, as a result of which, he was thrown out on the other side of the Road and at the same time, a speeding lorry bearing Registration No.TN-28-C-4690 ran over the deceased Raja @ Venkatesan resulting in his instantaneous death.

3. According to the claimants, the accident took place due to the rash and negligent driving of the drivers of the car and the lorry belonging to the first and third respondents and that since the said vehicles were insured with the second and fourth respondents respectively, the owners and the insurers of the car as well as the lorry are jointly and severally liable to pay compensation.

4. The owners of the car and the lorry remained absent before the Tribunal and therefore they were set exparte. The second respondent, the New India Assurance Company Limited., and the fourth respondent National Insurance Company Limited contested the claim petition on all the grounds available to the insured and the learned Motor Accidents Claims Tribunal/ Additional District Judge and Fast Track Court No.2, Salem, after analysing the evidence on record, awarded a compensation of Rs.2,85,000/- 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.S.Geetha, learned counsel appearing for the appellants / claimants contended that though the claimants have specifically contended that the deceased was earning a sum of Rs.3,000/- per month as a Cleaner, the Tribunal has fixed the notional income of the deceased only as Rs.2,500/- per month. He further contended that no amount was awarded towards future prospects of the deceased and prayed for enhancement of compensation.

6. Per contra, Mr.R.Sreevidhya, learned counsel appearing for the 2nd respondent / New India Assurance Company Ltd., and Mr.S.Arunkumar, learned counsel appearing for the 4th respondent/National Insurance Company Ltd., contended that the award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the orders and therefore, the same need not be disturbed at this stage.

7. The deceased Raja @ Venkatesan was a cleaner in a lorry by profession and was aged 21 years, therefore, the notional income fixed by the Tribunal at Rs.2,500/- per month is meagre and a sum of Rs.3,000/- per month is taken up as the

notional income of the deceased. 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 as a bachelor, 1/2 of the income of the deceased 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.3,000/-
 40% Future Prospects = Rs.1,200/-
 Total = Rs.3,000/- + Rs.1,200/- = Rs.4,200/-
 After 1/2 deduction = Rs.2,100/-

Loss of dependency

= Rs.2,100/- x 12 x 18
 = Rs.4,53,600/-

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.4,53,600/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	funeral expenses	Rs.15,000/-
Total		Rs.5,23,600/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,85,000/- to Rs.5,23,600/- 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.2,85,000/- to Rs.5,23,600/-.

(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 / New India Assurance Company Limited and the 4th respondent / National Insurance Company

Limited are directed to deposit the enhanced compensation amount i.e., Rs.5,23,600/- (less the amount already deposited if any) in the ratio of 50:50 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.483 of 2003 on the file of the Motor Accidents Claims Tribunal/ Additional District Judge and Fast Track Court No.2, Salem, 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(CO)

//True copy//

Sub Assistant Registrar

ssn

To

1. The Motor Accidents Claims Tribunal,
Additional District Judge and
Fast Track Court No.2, Salem,
Krishnagiri.

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

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.994068

+1cc to Mr.S.Arunkumar, Advocate SR.No.93460

C.M.A.No.2 of 2008

RSV(CO)
GMY(03/02/2020)