

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.3380 of 2005

National Insurance Company Limited,
Salem. Appellant/3rd respondent

Vs.

1. E.K.Mani
2. Thangamani ... Respondents 1 and 2/
Claimants
3. R. Govindan
4. M.Jayakumar ... Respondents 3 and 4/
Respondents 1 and 2

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the award passed in M.C.O.P.No.950 of 1995 dated 07.04.2003 by the I Additional Subordinate Judge, Motor Vehicle Accidents Claims Tribunal, Coimbatore.

For Appellant : Mr.R.Sunilkumar

For Respondents 1 and 2 : Mr.A.Panneerselvam
for Mr.K.Balaji

For Respondents 3 and 4 : No appearance

सत्यमेव जयते
J U D G M E N T

The appellant National Insurance Company Limited, 3rd respondent in MCOP No.950 of 1995 on the file of the I Additional Subordinate Judge, Motor Vehicle Accident Claims Tribunal, Coimbatore has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 questioning the quantum of compensation awarded by the tribunal.

2. The respondents 1 and 2/ claimants filed the claim petition in MCOP No.950 of 1995 before the tribunal seeking compensation of Rs.6,00,000/- under Section 166(1) of the Motor Vehicles Act, 1988 for the death of their son in a road accident

that took place on 28.05.1995, when he was driving an ambassador car bearing registration TN-N-8584 on Salem-Coimbatore main road. According to the claimants, when their deceased son Parthiban was nearing V.N.Palayam, a speeding lorry bearing registration No.TCS-4493 belonging to the 3rd respondent hit the car, as a result of which, their son died on spot. Their further contention is that rash and negligent driving of the driver of the lorry was the cause of the accident and that since the said lorry was insured with the present appellant, the owner of the lorry as well as the insurer are jointly and severally liable to pay compensation to them.

3. The 3rd respondent, driver of the lorry remained absent before the tribunal and therefore he was set exparte. The 4th respondent, the owner of the lorry and the appellant, the insurance company contested the claim petition.

4. After analysing the evidence on record, the First Additional Subordinate Judge, Motor Accident Claims Tribunal, Coimbatore, awarded a compensation of Rs.4,32,000/- together with interest at the rate of 9% per annum to the claimants and directed the owner of the lorry and the present appellant to pay the compensation amount jointly and severally to the claimants.

5. Aggrieved over the orders passed by the tribunal, the National Insurance Company Limited has filed the present appeal.

6. Mr.R.Sunilkumar, learned counsel appearing for the appellant contended that though the claimants did not adduce any evidence with regard to the age of the deceased, the tribunal has fixed the age of the deceased as 30 years and that though the deceased died as a bachelor, the tribunal has wrongly deducted 1/3 of his income towards his personal expenses.

7. It is true that no documentary evidence was adduced by the claimants to show that the deceased was aged 30 years on the date of accident. However, the claimants in their claim petition as well as in their evidence have clearly stated that their deceased son Parthiban was aged 30 years on the date of accident. It is pertinent to point out that the age of the father of the deceased was mentioned as 55 years while the age of the mother was mentioned as 45 years on the date of accident. No contra evidence was adduced by the respondents to show that the deceased was aged more than 30 years on the date of accident. In fact, the mother of the deceased was aged 45 years and in all probabilities, the age of the deceased would have been 30 years on the date of accident and it cannot also be more than that.

8. In the absence of proof of income, notional income of the deceased should be fixed at Rs.3,000/- per month, since the accident took place in the year 1995 and to this, as per the decision of the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601, 40% should be added towards future prospects of the deceased which comes to Rs.4,200/-. However, the tribunal has committed an error in deducting 1/3 of income towards personal expenses of the deceased, especially, when he died as a bachelor. Hence, 50% of the income of the deceased has to be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 17, as per the decision in Sarala Verma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Thus, Loss of dependency is (2100x12x17) Rs.4,28,400/-. In addition to that, as per the decision rendered by the Constitution Bench of the Honourable Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601, the claimants are entitled to Rs.40,000/- Rs.15,000, Rs.15,000/- and Rs.40,000/- towards "Love and affection, "Loss of Estate" and "Funeral Expenses" respectively. Thus, the claimants are entitled to a total compensation of Rs.4,98,400/- (4,28,400 + 40,000 + 15000 + 15000= 4,98,400) which is extracted here under.

Sl.No	Heads	Amount
1	Loss of dependency (2100x12x17)	4,28,400
2	Love and affection	40000
3	Loss of Estate	15000
4	Funeral Expenses	15000
	Total	4,98,400

However, the tribunal has awarded only a sum of Rs.4,32,000/-.

9. At this juncture, it is relevant to point out that the claimants did not file any appeal or cross objections against the orders passed by the tribunal. In the facts and circumstances of the case, I do not find any reason to interfere with the award passed by the tribunal.

10. In the result, the appeal is dismissed. No costs.
The compensation awarded by the tribunal is upheld.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

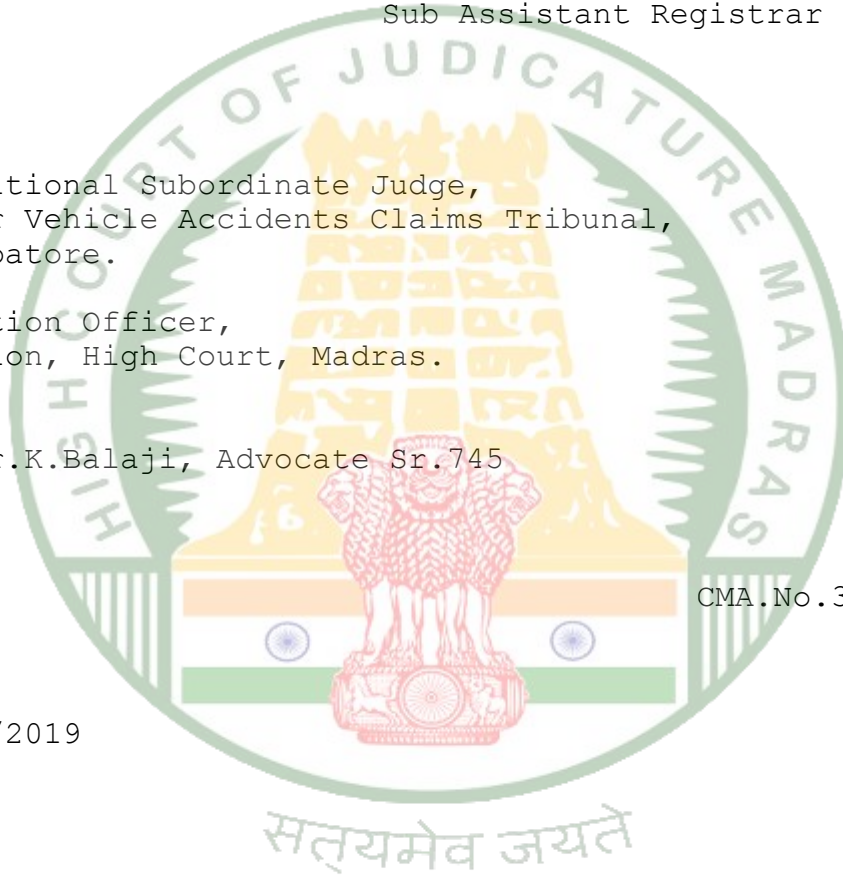
To

1. I Additional Subordinate Judge,
Motor Vehicle Accidents Claims Tribunal,
Coimbatore.
- 2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.K.Balaji, Advocate Sr.745

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srg 04/03/2019



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