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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.447 of 2007

K.Sathya

... Appellant/Petitioner

vs.

1.P.Raaja Shekar

2.The Branch Manager,
The New India Assurance Co., Ltd.,
Branch Office,
Parimala Complex,
11, E.V.N. Road,
Erode -11.

3.Sithan

4.Kamatchi

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 14.03.2006 in M.C.O.P.No.947 of 2004 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate No.2, Dharmapuri.

Appellant : Mr.P.Mani

R1, R3 & R4 : No appearance

R2 : Mr.N.Vijayaraghavan

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.947 of 2004 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate No.2, Dharmapuri. She filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.9,00,000/- for the death of one Kumaravel, husband of the claimant and son of the respondents 3 and 4 in a road accident on 01.02.2004.



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

On 01.02.2004, the deceased was driving a minidor van bearing Registration No. TN 29 E 7569 on Mettur - Dharmapuri Road and at about 05.30 a.m, a speeding lorry bearing Registration No. TN 33 H 0889 hit the minidor van, as a result whereof, the deceased Kumaravel sustained fatal injuries and died on the spot.

3. According to the claimant, the rash and negligent driving of the driver of the lorry belonging to the first respondent 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 first 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 Chief Judicial Magistrate No.2 / Motor Accident Claims Tribunal, Dharmapuri after analysing the evidence on record, awarded a compensation of Rs.4,20,000/- together with interest at the rate of 9% per annum to the claimant. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Heard Mr.P.Mani, learned counsel appearing for the appellant and Mr.N.Vijayaraghavan, learned counsel appearing for the second respondent. No appearance on behalf of the respondents 1, 3 & 4.

6. In the claim petition, it is contended that the deceased was a driver, earning a sum of Rs.4,500/- per month. In the absence of income proof, the Tribunal fixed the notional income of the deceased as Rs.3,000/- per month. It is pertinent to point out that the accident took place in the year 2004 and in the facts and circumstances, this Court is of the opinion that fixing a sum of Rs.4,500/- 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, especially, when the deceased was aged 23 years on the date of the accident. 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, 40% should be added towards future prospects of the deceased. Since there are three 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 18 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.4,500/-

40% Future Prospects = Rs.1,800/-

Total = Rs.4,500/- + Rs.1,800/- = Rs.6,300/-

After 1/3 deduction = Rs.4,200/-

Loss of dependency

= Rs.4,200/- x 12 x 16

= Rs.9,07,200/-

7. Apart from the above said amount, the appellant / claimant 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.9,07,200/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.9,77,200/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.4,20,000/- to Rs.9,77,200/- 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.4,20,000/- to Rs.9,77,200/-.

(iii) The appellant / claimant is 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.

(iv) The second respondent / The New India Assurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.9,77,200/- (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.947 of 2004 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate No.2, Dharmapuri within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the claimant / wife of the deceased is entitled to Rs.5,00,000/-, mother of the deceased is entitled to Rs.2,77,200/- and father of the deceased is entitled to Rs.2,00,000/- and are at liberty to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl
To

The Motor Accidents Claims Tribunal,
The II Chief Judicial Magistrate,
Dharmapuri.

+1cc to M/s.P.Mani, Advocate Sr.93851
+1cc to M/s.M.B.Gopalan, Advocate Sr.94240

C.M.A.No.447 of 2007

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srg 17/11/2021