



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.04.2019
CORAM:
THE HONOURABLE Mr. JUSTICE RMT.TEEKA RAMAN
C.M.A.No.62 of 2006

1.J.Sarasa (alias) Saraswathi
2.J.Sakthivel (Minor)
3.J.Aishwariya (Minor)
(Minors rep. by their mother and Natural
Guardian J.Sarasa (alias) Saraswathi)
...Appellants/Petitioners

vs.

1.Ambica Prasad
2.United India Insurance Co. Ltd.,
Chennai - 2.
R1-Exparte before Tribunal ...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 13.04.2005 in MCOP.No.1323 of 2003 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Madras.

For Appellants : Mr.S.Gangaram Prasad

For Respondents : Mr.D.Bhaskaran for R2

JUDGMENT

The appellants are the claimants in MCOP.No.1323 of 2003, on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Madras. They have filed the above claim petition under Sections 140, 141 and 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.10,00,000/-, for the death of one D.Jayavel, in a road accident that took place on 22.02.2003.

2. The case of the appellants/claimants is as follows:

(i) The first claimant is the wife of the deceased and the second and third claimants are the Children of the deceased.

(ii) The deceased was aged about 39 years, at the time of the accident. He was working as an electrician and was earning a sum of Rs.7,500/- per month.



(iii) Brief facts: On 22.02.2003, at about 18.45 hours, the deceased was riding his bicycle along with his co-worker, on two separate bicycles. They were proceeding from north to south on 100 feet road (opposite to Radha Park Inn Hotel), Chennai. At that time, the driver of a water tanker lorry bearing Registration No. AP 09 U 7423 drove the vehicle in a rash and negligent manner in the same road and direction and dashed against the deceased cycle and caused the accident. The victim died on the spot itself. The first respondent therein is the owner of the said lorry and the second respondent therein is the insurer of the said lorry.

(iv) Regarding the accident, a case in Cr. No. 72/AS2/2003 was registered with K-4 Anna Nagar Police Station and investigated. According to the claimants, the rash and negligent driving of the driver of the said lorry was the cause of the accident and that since, the said lorry was insured with the United India Insurance Company Limited, both the owner and insurer of the said lorry are liable to pay compensation of Rs.10,00,000/- to them.

3. The owner of the said lorry remained absent before the Tribunal, and therefore, he was set ex-parte. The second respondent/ Insurance Company contested the claim petition.

4. Before the Tribunal, on the side of the appellants/claimants, PW1 to PW3 were examined and exhibits P1 to P10 were marked. On behalf of the Insurance company, no exhibit or witness was marked. The Tribunal based upon the oral and documentary evidences, awarded a sum of Rs.4,33,000/- together with interest at the rate of 9% per annum and directed the respondents to pay the compensation jointly and severally to the claimants. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Heard both sides and perused the materials available on record.

6. The question of rash and negligence is not in dispute and hence, the finding rendered by the Tribunal, in that regard is hereby confirmed.

7. On the point of quantum, both the parties are heard. After perusing the evidence of PW3, the employer of the deceased and also PW2, the co-employee, this Court is of the considered view that the deceased was working as an electrician. Taking note of the Salary Certificate (Ex.P8) coupled with the evidence of PW2, this Court is inclined to fix the monthly income of the



deceased as Rs.4,500/-. Since, there are three persons depending on the income of the deceased, 1/3rd should be deducted towards the personal expenses of the deceased. Accordingly, after deduction, the deceased could have contributed Rs.3,000/- per month towards his family. This court is the opinion that the age of the deceased can be taken as per the post mortem certificate (Ex.P3). Therefore, the proper multiplier to be adopted in the instant case is 16 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. As per the decision laid down in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 40% should be added towards future prospectus of the deceased.

Calculation:

Notional income = Rs.4,500/-

After 1/3rd deduction = Rs.3,000/-

40% Future Prospects = Rs.1,200/-

Total = Rs.3,000/- + Rs. 1,200 = Rs.4,200/-

Loss of pecuniary benefits

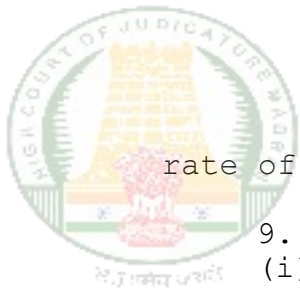
= Rs. 4,200/- x 12 x 16

= Rs.8,06,400/-

8. Accordingly, the award of the Tribunal in M.C.O.P.No. 1323 of 2003 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of pecuniary benefits	Rs.4,08,000/-	Rs.8,06,400/-
2.	Loss of consortium for first claimant	Rs.7,500/-	Rs.40,000/-
3.	Loss of love and affection for second and third claimants	Rs.7,500/-	Rs.80,000/- (Rs.40,000 + Rs.40,000)
4.	Loss of expectation of life	Rs.5,000/-	Nil
5.	Funeral expenses	Rs.5,000/-	Rs.15,000/-
6.	Loss of estate	Nil	Rs.15,000/-
	Total	Rs.4,33,000/-	Rs.9,56,400/-

The compensation awarded by the Tribunal is enhanced from Rs.4,33,000/- to Rs.9,56,400/- which shall 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 Rs.4,33,000/- to Rs.9,56,400/- which shall carry interest at the rate of 7.5% per annum.

(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 the receipt of the Court fee.

(iv) The second respondent - United India Insurance Company Limited is directed to deposit the entire compensation of Rs.9,56,400/- (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.1323 of 2003, dated 13.04.2005, on the file of the Motor Accidents Claims Tribunal, the Chief Judge, Court of Small Causes, Madras within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the first appellant is permitted to withdraw her share of compensation together with accrued interest and cost. The apportionment granted by the Tribunal shall be kept intact.

(vi) The appellants 2 and 3 are minor, and therefore, their share of compensation amount is ordered to be deposited in any one of the nationalized bank until they attain majority and the first appellant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
The Chief Judge,
The Court of Small Causes,
Madras.



Copy to:

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

+1cc to Mr.G.Balaji Prasad, Advocate sr.34429
+1cc to Mr.D.Bhaskaran, Advocate sr.34175

C.M.A.No.62 of 2006

spd(co)
nr 11.12.2019